Task Force on the Arizona Rules of Family Law Procedure

Meeting Agenda

Friday, September 29, 2017
10:00 AM to 4:00 PM
State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	**Call to Order** **Introductory remarks**	*Hon. Rebecca Berch and Hon. Mark Armstrong, Co-Chairs*
Item no. 2 Page 3	**Approval of the August 25, 2017 meeting minutes**	*Justice Berch and Judge Armstrong*
Item no. 3 Page 15 Page 11	**New rules adopted at the August rules agenda:** - **R-17-0017 [Rule 67.2]** - **R-17-0019 [Rule 23.1]**	*Judge Armstrong*
Item no. 4 Pages 29-46 Pages 47-118 Pages 119-174 Pages 175-190	**Workgroup reports:** - **Workgroup 1: Rules 20 and 31, and further review of Rules 28 and 30** - **Workgroup 2: Rules 42 and 46, and further review of Rules 40 and 41** - **Workgroup 3: Rules 69, 70, 72, 74, and 75, and further review of Rule 65** - **Workgroup 4: Rules 78, 92, 95, and 97**	 *Mr. Woodnick, Mr. Davis* *Comm'r Christoffel, Aaron Nash* *Judge Swann, Mr. Wolfson, Mr. Horowitz* *Mr. Berkshire, Judge Eppich, Judge McMurdie*
Item no. 5	**Roadmap** - **Next meeting dates:** Monday, October 30 [pending confirmation] [Room 230] Monday, November 13 [Room 119] Friday, December 1 [Room 119] Friday, December 15 [Room 119]	*Justice Berch and Judge Armstrong*
Item no. 6	**Call to the Public** **Adjourn**	*Justice Berch*

The Chairs may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda. Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Please make requests as early as possible to allow time to arrange accommodations.

Task Force on the Arizona Rules of Family Law Procedure

State Courts Building, Phoenix

Meeting Minutes: August 25, 2017

Members attending: Hon. Rebecca Berch (Chair), Hon. Mark Armstrong (Co-Chair), Michael Aaron, Hon. John Assini (by phone), Keith Berkshire, Annette Burns, Cheri Clark, Hon. Suzanne Cohen, Hon. Dean Christoffel, Kiilu Davis, Hon. Karl Eppich, Mary Boyte Henderson by her proxy Lindsay Cohen, Joi Hollis, David Horowitz, Hon. Paul McMurdie, Aaron Nash, Jeffery Pollitt, Janet Sell, Steven Wolfson, Gregg Woodnick

Absent: Helen Davis, Hon. Peter Swann

Guests: Ed Pizarro Sr.

Administrative Office of the Courts Staff: Mark Meltzer, Sabrina Nash, Karla Williams, Jodi Jerich

1. Call to order; preliminary remarks by the Chair; approval of meeting minutes. The Chair called the seventh Task Force meeting to order at 10:00 a.m. She acknowledged the members' commitment to this project and their ongoing work, which includes 5 workgroup meetings since the August 4 Task Force meeting; 33 workgroup meetings since February; and totals to-date of more than 63 hours spent in workgroup meetings and 26 hours spent at Task Force meetings. The Chair reminded members to keep notes of revisions to their assigned rules, and requested the workgroup chairs to assure these notes are taken and maintained.

The Chair asked members to review the draft August 4, 2017 meeting minutes, and a member made this motion:

> **Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 007**

2. Workgroup 1. The Chair then asked Workgroup 1 to present its rules.

Rule 5 ("consolidation"): Mr. Woodnick advised that the workgroup did not alter the rule substantially, however, it deleted the word "only" and added the word "not" in (a)(4), as follows: "The court may not consolidate a case involving ~~only~~ an order of protection with the substantive family law case." Members agreed that consolidating the order of protection case with a family case might result in impermissible protective order information appearing in the court's online records, and this could impair federal funding. Nonetheless, the rule should allow the court to conduct a hearing that involves both cases. Members agreed that an explanatory comment to the rule might explain this nuance. But after additional discussion, members instead revised the rule to simply provide, "the court may not consolidate a case involving an order of protection with a family law case, but may conduct a joint hearing." (During that discussion, members agreed to delete the word "substantive" in (a)(4) ("the substantive family law case") as

unnecessary.) In draft rule (a)(2) ("assigned judge"), members substituted "first-filed case" for "earliest-filed case" because the latter term ("earliest") implies there are more than two cases. The draft rule randomly used the words "actions" and "cases," and members concurred that the rule should use the word "cases" throughout.

Members made syntax changes to section (b) and eliminated unnecessary words, including the word "specifically" in the phrase, "unless the court specifically orders otherwise." Members agreed the phrase "not only for the purpose" in that section was a better choice than "not merely for the purpose." They also added the word "hearing" so it is now "hearing or trial." In section (c), members struck the word "previously" as an incorrect modifier in the phrase "previously filed a petition," and substituted "will be treated as a response" for the phrase "will constitute that party's response." Ms. Sell raised the issue of consolidating multiple child support enforcement actions that are pending in different counties, and she proposed a new subpart (a)(5) to address this. Members responded that this is a venue rather than a consolidation issue, and the Chair directed Workgroup 1 to consider this when it reviews Rule 23 and pending rule petition number R-17-0019, which concerns a proposed new venue Rule 23.1. A member suggested that if the workgroup prepares a new rule, it also should consider a mechanism to assure that the record of proceedings is provided to each county when proceedings from various counties are joined.

Rule 5.1 ("simultaneous dependency and legal decision-making/parenting time proceedings"): Mr. Woodnick also presented Rule 5.1, which concerns the interplay between proceedings under Title 8 and Title 25. The workgroup recommended the deletion of portions of the current family rule that direct the juvenile court rather than the family court. The members discussed each of the workgroup's three proposed sections of Rule 5.1. In each section, including section titles, members changed juvenile or family court to juvenile or family division. In section (a) ("transfer to juvenile court"), members agreed that the word "may" transfer rather than "must" transfer was appropriate because the family court may keep aspects of the case that do not involve children, such as dissolution of the marriage or division of property. The children's issues are transferred to, rather than consolidated with the juvenile action, and both actions continue under their respective case numbers. Although the word "transfer" might not be legally precise, it fairly describes for self-represented litigants what is happening with their cases. Consistently with these concepts, members revised section (a) to simply state, "if pending family law and dependency proceedings concern the same parties, the juvenile division has jurisdiction over the children." But the rule does not specify the actions that a juvenile judge may take; that should be addressed by a juvenile rule.

Members discussed how the family court would be informed of a pending dependency proceeding. Often the family court is informed of the dependency fortuitously. Accordingly, members added a new subpart (a)(1) regarding "notice." This provision provides, "the parties must notify the family division of a pending dependency

proceeding." Under this provision, a party can provide the notice by a filed document, in open court, or by other means.

Members also discussed the extent of the juvenile court's jurisdiction over child support issues. Workgroup members noted that they preserved current Rule 5.1(E) (now proposed Rule 5.1(c) entitled "support orders") to clarify the juvenile judge's authority to enter support orders in a dependency or guardianship proceeding. Members discussed the interplay between Rule 5.1(c) and A.R.S. § 25-403.09. Under the rule and statute, the court must calculate child support when entering orders concerning parenting time or legal decision-making. In practice, some counties prefer to make the calculation in the juvenile court during the dependency proceeding. In other counties, and to assure the accuracy of arrearage calculations and ensure that the court makes all the required findings under A.R.S. § 25-403, the child support aspect of the case is referred to the family court.

Either the family or the juvenile court may enter a support order; that is discretionary and section (c) uses the word "may." But to assure that one of the courts enters an order and that both courts are aware of it, members added to section (c) the sentence, "any order regarding child support must be filed in both the family division and the juvenile division." This also assures that the order is publicly accessible, because it would not be if it was only filed in the juvenile division. If there is no pending family case, judicial education rather than another rule provision should address how to proceed. Educational literature might describe whether a family court proceeding should be initiated in that circumstance, as well as how the court should modify support orders if one party's parental rights are severed. Rule 5.1 does not specify what happens in every one of a multiplicity of scenarios the members contemplated; rather, members agreed that the rule is intended to provide the courts with authority to do what is necessary, and to utilize their discretion in accomplishing those objectives. Finally, members agreed to add the word "establish" in the first sentence of section (c) ("the juvenile division may establish, suspend, modify, or terminate a child support order"), and to change "wage assignment" to "income withholding order." With these changes, members completed and approved their revisions to Rule 5.1.

Rule 7 ("protected and unpublished addresses"): Ms. Burns, who presented Rule 7, advised that although the workgroup made few substantive changes to this rule, the current rule is not easy to follow and the workgroup reorganized it. Ms. Burns noted recent changes she had made to the draft of Rule 7(d)(3)(B): "…after a hearing and ~~up~~on a finding that ~~the party with the protected address does not reasonably believe that~~ there is no reasonable belief that…." Members concurred with these changes and made further organizational changes to the rule. They deleted section (a) ("generally") and merged provisions of sections (b) and (c) ("on request" and "request procedure"). As revised, these provisions require the court to protect the requesting party's address if the other party does not know that address, and there is either a reasonable belief of harm without a protected address, or there is a valid order of protection. In addition, the court must

(not may) protect the address if the party shows the requisite elements; and the party must show a reasonable belief that the party may (not will) suffer harm. Also, as revised, the party's address would be automatically protected upon filing a request and pending a court determination within 5 days after the filing.

Members reversed the order of references to the companion form (in the draft rule it is now, "Form 15, Rule 97," rather than vice versa), and made other changes that align the text of Rule 7 with Form 15. Members preferred the term "protected address" rather than "unpublished address" throughout the rule, and they made conforming changes to the title and body of the rule. Mr. Nash informed members of certain practices in Maricopa's Superior Court regarding protected addresses. He said that the clerk charges for mailing, as provided by statute; when mail is undeliverable to the protected address, the clerk will scan the returned envelop, but not necessarily the contents, and put the scan in the court's file; that in that circumstance, the filing party is generally not notified of non-delivery; and the procedure of the protected person providing an address on a separate sheet of paper, as the rule provides, works well. The workgroup recommended deletion of language that the clerk's duty to protect an address ended upon entry of a final appealable order; the workgroup believed that a party should not lose the protection just because the case has concluded. However, at Mr. Nash's suggestion, and given his familiarity with the rule's operation, members agreed to delete this provision, thereby simplifying when the clerk's duty terminates. (The clerk's duty would now end "when the person whose address is protected files a notice of published address that sets forth the person's current mailing address for future service.") There were no additional comments and members approved this rule.

Rule 17 (currently, "limits on examining a witness," and as proposed, "reserved") and Rule 22 ("conduct of proceedings"): Judge Cohen reported the workgroup's recommendation that the single sentence of Rule 17 be relocated as Rule 22(c). Rule 17 would then be reserved. Members agreed that these were sensible changes and approved them.

Rule 23 (currently, "beginning an action," and as proposed, "reserved"): Mr. Davis noted that Rule 23 currently is composed of three sentences. The Task Force previously approved moving the second and third sentences of Rule 23 to Rule 9 ("duties of parties and counsel"). Mr. Davis advised that the workgroup now recommended transferring the remaining sentence of Rule 23 ("a family law action is commenced by filing a petition with the clerk of the court") to Rule 24 ("pleadings"), although the workgroup has not yet restyled Rule 24. Rule 23 would be "reserved." Members approved these changes.

Rule 33 (currently, "counterclaims; third party practice," and as proposed, "third party rights and other claims"): Ms. Burns presented the workgroup's proposed reorganization of Rule 33, which included a reference in section (a) to A.R.S. § 25-409 and the incorporation by reference of several civil rules in section (b). This led to an extensive discussion about claims and joinder.

Following that discussion, members agreed to add a reference in section (b) to Civil Rule 24. Members discussed a change to that portion of draft Rule 33(a) that provided that a person "may intervene in an existing action pursuant to A.R.S. § 25-409." Some members were reluctant to use the term "intervene" because it is not used in the referenced statute. The statute instead says that a person "may petition the superior court…." Members considered conforming the language in section (a) to what is shown in the statute, but they concluded that the person's appearance is in the nature of an intervenor, and that captions of these petitions often identify those persons as intervenors. Members accordingly did not revise the draft of section (a). However, they added to the proposed title of Rule 33 the words, "in an existing action." One member proposed an alternative to the draft rule that would simply provide, "a party who wishes to join in a family action may petition the court to do so." Members declined this proposal. They also declined a suggestion to rewrite section (b) to eliminate cross-references to the civil rules; the cross-references assure that case law developed under the civil rules can be cited on the rare occasions when one of those civil rules is utilized in a family case. Ms. Sell requested a new section in Rule 33 that would codify the State's right to intervene under A.R.S. § 25-509, but the Chair deferred her request pending Workgroup 1's presentation of other rules concerning pleadings and parties. Members had no other changes to Rule 33 and approved the rule in its current form.

3. **Workgroup 3.** Mr. Wolfson presented Rule 65.

Rule 65 (currently, "failure to make disclosure or discovery; sanctions," and as proposed, "failure to make disclosures or to cooperate in discovery, sanctions"): In draft Rule 65(a) ("motion for order compelling disclosure or discovery"), the workgroup condensed several provisions of current Rule 65(A) (such as failing to answer a question at a deposition, answer an interrogatory, produce materials, etc.) into a single provision that simply says a party "has not complied with a discovery rule." The workgroup removed superfluous references to Rule 53 protective orders. It modified the standard for not awarding expenses of a discovery motion; the current rule says the opposing party was "substantially justified," and the revised rule says the opposing party acted "in good faith." In section (b), the workgroup proposed that a sanction of dismissal not be available in circumstances where dismissal "would be contrary to the best interests of a child." It modified the sanction of prohibiting "claims or defenses" to one that prohibited "arguments." It changed the contempt sanction to one that would instead allow the court to schedule a proceeding to treat a violation as contempt of court. The workgroup eliminated proposed section (c) ("failure to timely disclose; inaccurate or incomplete disclosure; disclosure after deadline or during trial") because these violations are subsumed under proposed section (a), the remedies under section (b) apply, and section (c) is therefore duplicative. The Chair then requested the members' comments.

One member inquired whether the sanctions in section (b) should include "any other sanction that the court deems appropriate." Members noted that the draft already used the language, "including the following," and interpretation of similar statutory

language suggests that alternatives are not limited to those listed. Another member asked whether "arguments" includes "claims or defenses," or whether all three terms should be used. For example, is a *Cockrell* claim a variety of argument, or would the term argument fail to preserve a *Cockrell* claim on appeal? Members concluded that arguments probably include claims and defenses, and regardless, a court order that precludes an argument would specify the claim or defense it is precluding. Members agreed to use the word "argument" in Rule 65, although they might take a different approach when they consider Rule 78. A provision on failure to disclose information before trial has a proposed cutoff of less than 30 days before trial. The corresponding civil rule is less than 60 days before trial, and members discussed which time was more appropriate. One member argued in favor of 60 days because expert disclosure is required 60 days before the trial of a family case; and disclosure of a lay witness 31 days before trial is too close to trial. Moreover, the court might not timely decide a motion to preclude that witness if the motion is filed only four weeks before trial, and a ruling on the eve of trial might make the parties' trial preparation difficult. On the other hand, disclosure 30 days before trial appears to be common in family cases, and the discussion concluded with a general agreement to leave the time at 30 days.

- One member observed that multiple references to "after giving an opportunity to be heard" are formatted with different punctuation, and requested the workgroup to modify these for uniformity. The workgroup should recheck cross-references to other rules to assure they are accurate. Mr. Wolfson advised the workgroup also will revisit Rule 65 to confirm the extent of deletions of the remaining portions of the rule.

4. **Workgroup 2.** Commissioner Christoffel presented Rule 41 and the workgroup's further revisions to Rule 40(f).

Rule 40 ("summons"): Commissioner Christoffel reminded members that they approved the workgroup's changes to Rule 40 at the August 4 meeting, but thereafter Workgroup 2 made further changes to Rule 40(f) ("accepting service; voluntary appearance"). He said that the acceptance provisions of Rule 40(f) as previously proposed did not include details on the mechanics of accepting service; those details were included in staff's initial versions of Rules 41 and 42. In reviewing Rule 41, workgroup members concurred that instead of splitting the provisions on acceptance into multiple rules, these details should be consolidated in Rule 40(f).

Task Force members believed the workgroup's revised draft inadequately addressed issues of waiving jurisdiction and certain other defenses. Members discussed, reorganized, and revised the text of Rule 40(f)(1) ("accepting service"). The revised text included, among other things, the phrase "if the respondent agrees to sign an acceptance of service." This phrase emphasizes the voluntary nature of an acceptance and allows the respondent to change a decision to accept at any time before signing and returning an acceptance. These changes also would allow the respondent to sign an acceptance

before a court clerk, as the current rule provides. One member noted that a party also should be able to accept service of a post-decree petition.

- The workgroup should consider a separate rule for acceptance of a post-decree petition, or include the post-decree acceptance process in a new Rule 41 provision. Ms. Sell also requested the workgroup to determine whether service of a summons in IV-D cases, as provided in draft Rule 40(e), also should be relocated in Rule 41.

Rule 41 (currently, "service of process within Arizona," and as proposed, "service within Arizona"): Commissioner Christoffel prefaced his review of Rule 41 by advising that the workgroup was considering merging duplicate provisions of Rule 42 into Rule 41. He then noted the workgroup revised the title of Rule 41 by removing a reference to process. He advised that Ms. Clark had determined that the Servicemembers' Civil Relief Act did not impact the service provisions of Rule 41. In draft Rule 41(d) ("service by mail or national courier service"), the workgroup added a requirement that the serving party must request (1) restricted delivery to the party being served, and (2) a receipt signed by the addressee. This should mitigate concerns that someone other than the party being served is the recipient of the mailing, a concern that is amplified when the signature on the return receipt is illegible. The workgroup deleted a section of Rule 41 entitled "serving a minor who has a guardian or conservator" because it is covered by another section entitled "serving a person who has a court-appointed guardian or conservator." In the latter section, the workgroup removed unnecessary references to persons who are "insane, gravely disabled, incapacitated, or mentally incompetent," because the court's order of appointment ordinarily would be based on such a determination. Draft Rule 41(g) concerns service on a governmental entity. Subpart (g)(2) is entitled "alternative procedure for serving the state in a Title IV-D case." Ms. Sell advised that she had not yet seen any use of the alternative procedure, and the rule might precede the availability of technology described in the rule.

Workgroup 2 proposed revisions to section (k) ("service by publication"), and Commissioner Christoffel reviewed those revisions with the Task Force. After the most recent workgroup meeting, Commissioner Christoffel proposed further revisions to subpart (k)(2) ("jurisdiction"), which were projected on-screen. The first sentence of Commissioner Christoffel's version provided, "Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property not located in Arizona, or any other issue requiring personal jurisdiction over a party." He added the words "not located in Arizona," which are not included in current Rule 41(N), after "marital property" to indicate that an Arizona court has *in rem* jurisdiction over property that is located in Arizona. A comment following current Rule 41(N) indicates that the court cannot divide property in Arizona when service was made by publication. Although this comment is relatively recent, Commissioner Christoffel advised that he disagrees with it. Other members, however, agreed with it, and suggested that the court only obtains jurisdiction

when there is another level of service, e.g., alternative service, in addition to publication. Alternative service requires court approval, but publication does not.

- The workgroup should review draft Rule 41(k)(2) and the rule on alternative service to clarify what service is required for an Arizona court to have jurisdiction over property in Arizona when a respondent is served by publication. The workgroup also should bring this rule back to the Task Force for further review following the proposed merger of Rule 41 with Rule 42.

5. **Call to the public.** Mr. Ed Pizarro Sr. responded to a call to the public and addressed members of the Task Force.

6. **Roadmap; adjourn.** The Chair reviewed pending Task Force meeting dates (September 29, October 20, December 1, and December 15 (all Fridays) and the newly added meeting date of Monday, November 13. She would like to reserve the December 15 meeting for a discussion of a rule petition, rather than reviewing rules, so the Task Force has 4 meetings currently set to discuss the remaining 46 rules. Several members expressed conflicts with the October 20 date, and the Chair directed staff to determine if an alternative date is available.

The meeting adjourned a**t** 4:09 p.m.

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-17-0019
ADD RULE 23.1, ARIZONA RULES OF FAMILY LAW PROCEDURE	)	
	)	**FILED 08/31/2017**

ORDER
ADDING RULE 23.1, ARIZONA RULES OF FAMILY LAW PROCEDURE

A petition having been filed proposing to add Rule 23.1, Arizona Rules of Family Law Procedure, and comments having been received, upon consideration,

IT IS ORDERED that Rule 23.1, Arizona Rules of Family Law Procedure, be added in accordance with the attachment hereto, effective January 1, 2018.

DATED this 31st day of August, 2017.

/s/
SCOTT BALES
Chief Justice

TO:
Rule 28 Distribution
Hon Suzanne E Cohen
Hon David L Mackey

Attachment
(New language is underlined)

Rules of Family Law Procedure

Rule 23.1. Improper Venue.

A. Transfer Upon Court's Motion. When a family law action has been commenced in an improper county in violation of A.R.S. § 12-401, A.R.S. § 25-502, or A.R.S. § 25-802, the court, upon a finding that venue is improper, may on its own motion transfer the case to a county where venue is proper, so long as such transfer occurs no later than thirty (30) days after a Resolution Management Conference has been scheduled pursuant to Rule 76. Prior to ordering a transfer of the case under this rule, the court must provide the parties notice of its intent to transfer the case and allow the parties ten (10) days to file objections to the proposed transfer.

B. Fees. If a change of venue is ordered under this Rule, the plaintiff must pay the transmittal fee under A.R.S. § 12-284 to the clerk of the court transferring the case no later than 20 days after the order directing the change. No later than 30 days after the clerk of the receiving court receives the file, the plaintiff must pay that clerk the initial case filing fee. If the plaintiff fails to timely pay either the transferring court's transmittal fee or the receiving court's filing fee, the court that ordered the change must dismiss the case without prejudice. The court ordering the transfer of venue may order the clerk of that court to refund the plaintiff's original filing fee.

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-17-0017
RULES 67(C) AND 67.2, ARIZONA RULES OF FAMILY LAW PROCEDURE	)	
	)	**FILED 08/31/2017**

ORDER
ABROGATING RULE 67(C) AND ADDING RULE 67.2, ARIZONA RULES OF FAMILY LAW PROCEDURE

A petition having been filed proposing to abrogate Rule 67(C), Arizona Rules of Family Law Procedure, and add new Rule 67.2, Arizona Rules of Family Law Procedure, and no comments having been received, upon consideration,

IT IS ORDERED that Rule 67(C), Arizona Rules of Family Law Procedure, be abrogated, and that new Rule 67.2, Arizona Rules of Family Law Procedure, be added, in accordance with the attachment hereto, effective January 1, 2018.

DATED this 31st day of August, 2017.

/s/
SCOTT BALES
Chief Justice

TO:
Rule 28 Distribution
Barbara Atwood
Timothy Berg
Lisa M Panahi

ATTACHMENT

ARIZONA RULES OF FAMILY LAW PROCEDURE

Rule 67. Mediation, ~~Arbitration,~~ Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services[1]

A. – B. [No change in text.]

~~**C. Arbitration.** The parties may agree to arbitrate any and all issues in accordance with the Arizona Arbitration Act, A.R.S. §§ 12-1501 to 1518 or any other law permitting arbitration. The parties or counsel, if any, shall file with the court a written notice of their agreement to arbitrate some or all of the issues before the court, attaching their written agreement to arbitrate, stating the name of the arbitrator(s), and the date(s) of arbitration. The decision of the arbitrator(s) shall be submitted to the court for a determination that said decision conforms to statute for entry of a decree or other written orders in accordance therewith. The parties shall contract directly with the arbitrator(s) and be responsible for payment of any fees for such arbitration.~~

C~~D~~. Settlement Conferences. Upon motion of any party, or upon the court's own motion, the court may direct the parties to attend a settlement conference. Upon agreement of the parties, the settlement conference may be conducted by the judge or commissioner presiding over the action. The court may direct that the settlement conference be conducted by another judge or commissioner of the court, or by a judge pro tempore as part of any ADR program overseen, administered, or authorized by the court.

1. *Procedures*. At the request of a party or on its own motion, the court may direct the parties, the attorneys for the parties, and any other person deemed necessary to facilitate settlement of the issues, to participate in the settlement conference. The court may enter an order setting the date for the conference and enter other orders appropriate under the circumstances of the case to facilitate the settlement conference.

2. *Memoranda*. Except as otherwise ordered by the court, at least one week before the settlement conference the parties shall furnish the settlement conference officer with their Settlement Conference Memoranda or a Pretrial Statement addressing the following:

a. a general description of the issues in dispute, the party's position on each issue and the evidence that will be presented to support the party's position;

b. where the issues involve financial matters, the memorandum shall include a current Affidavit of Financial Information, a list of outstanding debts and the party responsible for each debt, and an inventory of community or joint assets, including dates of acquisition, amounts of encumbrance, and present value;

c. a summary of the negotiations that have previously occurred; and

d. any other information the party believes will be helpful to the settlement of the issues.

[1] Changes or additions in Rule 67 text are indicated by underscoring and deletions from text are indicated by strikeouts.

The Settlement Conference Memorandum shall not be filed with the court.
3. *Ex Parte Communication*. At any settlement conference conducted pursuant to this rule, the court, with consent of all those participating in the conference, may engage in *ex parte* communication with the parties if the court determines that will facilitate the settlement of the case.
4. *Domestic Violence*. At the request of a party or on the court's own motion, in cases where there has been domestic violence between the parties, the court shall put reasonable procedures in place to protect the victim from harm, harassment, or intimidation.
5. *Agreements*. Any binding agreement that is reached by the parties shall comply with Rule 69. As part of any agreement reached, the parties shall acknowledge that the agreement was entered into by them voluntarily and without threat or undue influence after full disclosure of all relevant facts and information, that it is intended to be a final binding agreement pursuant to these rules, and that it is fair, equitable, and where there are minor children common to the parties, is in the best interests of the children. The judge, commissioner, or judge pro tempore conducting the settlement conference shall make any findings necessary to approve the agreement pursuant to A.R.S. § 25-317 and may sign any Decree of Dissolution presented that conforms to the agreements reached by the parties. Any Decree of Dissolution signed by a judge pro tempore in accordance with this rule shall have the same force and effect as a Decree signed by the judge or commissioner to whom the case is assigned.
6. *Failure to Appear*. The parties and counsel, if any, shall be required to appear in person at all settlement conferences scheduled. The court may impose sanctions as permitted by Rule 71 for failing to appear and participate in the settlement conference.
7. *Reports to the Court*. If no or partial agreement is reached in the settlement conference, the settlement conference judge or commissioner shall file a brief report with the court stating that the parties met and attempted to resolve their differences, but the settlement conference was unsuccessful. The report shall also state any agreements reached and the issues remaining for resolution. The settlement conference judge shall not report the positions of the parties and shall not comment upon or offer any opinion about the position of any party. The settlement conference judge or commissioner may also advise the court if the parties or the settlement conference judge or commissioner believe that a further settlement conference would be helpful to resolving the remaining issues.

D~~E~~. Other Dispute Resolution Processes; Fees. The court may establish, approve, or administer other dispute resolution processes designed to assist the parties in resolving disputes without litigation through contested proceedings. Participants in an ADR service provided through the court may be charged a fee in accordance with the law.

New Rule 67.2. Uniform Family Law Arbitration Rule[2]

A. Definitions. In this rule:

(1) "Arbitration agreement" means an agreement that subjects a family law dispute to arbitration.

(2) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator.

(3) "Arbitrator" means an individual selected, alone or with others, to make an award in a family law dispute that is subject to an arbitration agreement.

(4) "Child-related dispute" means a family law dispute regarding legal decision-making, parenting time, visitation, or financial support regarding a child.

(5) "Court" means the Superior Court of Arizona.

(6) "Family law dispute" means a contested issue arising under Title 25 of the Arizona Revised Statutes and within the scope of the Arizona Rules of Family Law Procedure.

(7) "Party" means an individual who signs an arbitration agreement and whose rights will be determined by an award.

(8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

(9) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(11) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

B. Scope.

(1) This rule governs arbitration of a family law dispute.

(2) This rule does not authorize an arbitrator to make an award that:

(a) grants a legal separation, dissolution of marriage, or annulment;

(b) grants a guardianship of a child or incapacitated adult; or

(c) grants an adoption, terminates parental rights, or determines dependency or other status of a child under Title 8 of the Arizona Revised Statutes.

[2] Because Rule 67.2 is an entirely new rule, the text is not underlined.

C. Applicable law.

(1) Family law arbitration shall be conducted according to A.R.S. §§ 12-3001 through 3029, as supplemented by this Rule.

(2) In determining the merits of a family law dispute, an arbitrator shall apply the law of this state, including its choice of law principles.

D. Arbitration agreement.

(1) An arbitration agreement must:

(a) be in a record signed by the parties;

(b) identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator; and

(c) identify the family law dispute the parties intend to arbitrate.

(2) Except as otherwise provided in subdivision D(3), an agreement in a record to arbitrate a family law dispute that arises between the parties before, at the time, or after the agreement is made is valid and enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(3) An agreement to arbitrate a child-related dispute that arises between the parties after the agreement is made is unenforceable unless:

(a) the parties affirm the agreement in a record after the child-related dispute arises, or

(b) the agreement was entered during a family law proceeding and the court approved or incorporated the agreement in an order issued in the proceeding.

(4) If a party objects to arbitration on the ground the arbitration agreement is unenforceable or the agreement does not include a family law dispute, the court shall decide whether the agreement is enforceable or includes the family law dispute.

E. Notice of Arbitration. A party may initiate arbitration by giving notice to arbitrate to the other party in the manner specified in the arbitration agreement or, in the absence of a specified manner, under the law and procedural rules of this state, other than this rule, governing contractual arbitration.

F. Motion for Judicial Relief.

(1) A motion for judicial relief under this rule must be made to the court in which a proceeding is pending involving a family law dispute subject to arbitration or, if no proceeding is pending, a court with jurisdiction over the parties and the subject matter.

(2) On motion of a party, the court may compel arbitration if the parties have entered into an arbitration agreement that complies with paragraph D unless the court determines under paragraph K that the arbitration should not proceed.

(3) On motion of a party, the court shall terminate arbitration if it determines that:

(a) the agreement to arbitrate is unenforceable;

(b) the family law dispute is not subject to arbitration; or

(c) under Paragraph K, the arbitration should not proceed.

(4) Unless prohibited by an arbitration agreement, on motion of a party, the court may order consolidation of separate arbitrations involving the same parties and a common issue of law or fact if necessary for the fair and expeditious resolution of the family law dispute.

G. Qualification and Selection of Arbitrator.

(1) Except as otherwise provided in subdivision G(2), unless waived in a record by the parties, an arbitrator must be:

(a) an attorney in good standing admitted to practice or on inactive status or a judge on retired status; and

(b) trained in identifying domestic violence and child abuse according to standards established under law of this state other than this rule for a judicial officer assigned to hear a family law proceeding.

(2) The selection of the arbitrator must be in accordance with the identification in the arbitration agreement of an arbitrator, arbitration organization, or method of selection.

(3) If an arbitrator is unable or unwilling to act or if the agreed-on method of selecting an arbitrator fails, on motion of a party, the court shall select an arbitrator.

H. Disclosure by Arbitrator; Disqualification.

(1) Before agreeing to serve as an arbitrator, an individual, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to affect:

(a) the impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with a party, attorney representing a party, or witness; or

(b) the arbitrator's ability to make a timely award.

(2) An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.

(3) An objection to the selection or continued service of an arbitrator and a motion for a stay of arbitration and disqualification of the arbitrator must be made under the law and procedural rules of this state, other than this rule, governing arbitrator disqualification.

(4) If a disclosure required by subdivision H(1) or (2) is not made, the court may:

(a) on motion of a party not later than 30 days after the failure to disclose is known or by the exercise of reasonable care should have been known to the party, suspend the arbitration;

(b) on timely motion of a party, vacate an award under subdivision R(1)(b); or

(c) if an award has been confirmed, grant other appropriate relief under law of this state other than this rule.

(5) If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement may select a new arbitrator or request the court to select another arbitrator as provided in paragraph G.

I. Party Participation.

(1) A party may:

(a) be represented in an arbitration by an attorney;

(b) be accompanied by an individual who will not be called as a witness or act as an advocate; and

(c) participate in the arbitration to the full extent permitted under the law and procedural rules of this state, other than this rule, governing a party's participation in contractual arbitration.

(2) A party or representative of a party may not communicate ex parte with the arbitrator except to the extent allowed in a family law proceeding for communication with a judge.

J. Temporary Order or Award.

(1) Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order under A.R.S. § 25-404 and Rule 47 or 48.

(2) After an arbitrator is selected:

(a) the arbitrator may make a temporary award under A.R.S. § 25-404 and Rule 47 or 48; and

(b) if the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, on motion of a party, the court may enter a temporary order.

(3) On motion of a party, before the court confirms a final award, the court under paragraph O, Q, or R may confirm, correct, vacate, or amend a temporary award made under subdivision J(2)(a).

(4) On motion of a party, the court may enforce a subpoena or temporary award issued by an arbitrator for the fair and expeditious disposition of the arbitration.

K. Protection of Party or Child.

(1) In this paragraph, "protection order" means a protective order, an injunction, or other order, issued under the domestic-violence, family-violence, or stalking laws of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against, harassment of, contact or communication with, or being in physical proximity to another individual who is a party or a child under the custodial responsibility of a party.

(2) If a party is subject to a protection order or an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines:

(a) the affirmation is informed and voluntary;

(b) arbitration is not inconsistent with the protection order; and

(c) reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.

(3) If an arbitrator determines that there is a reasonable basis to believe a child who is the subject of a child-related dispute is abused or neglected, the arbitrator shall terminate the arbitration of the child-related dispute and report the abuse or neglect to the Arizona Department

of Child Safety.

(4) An arbitrator may make a temporary award to protect a party or child from harm, harassment, or intimidation.

(5) On motion of a party, the court may stay arbitration and review a determination or temporary award under this paragraph.

(6) This paragraph supplements remedies available under law of this state other than this rule for the protection of victims of domestic violence, family violence, stalking, harassment, or similar abuse.

L. Powers and Duties of Arbitrator.

(1) An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.

(2) An arbitrator shall provide each party a right to be heard, to present evidence material to the family law dispute, and to cross-examine witnesses.

(3) Unless the parties otherwise agree in a record, an arbitrator's powers include the power to:

(a) select the rules for conducting the arbitration;

(b) hold conferences with the parties before a hearing;

(c) determine the date, time, and place of a hearing;

(d) require a party to provide:

(i) a copy of a relevant court order;

(ii) information required to be disclosed in a family law proceeding under law of this state other than this rule; and

(iii) a proposed award that addresses each issue in arbitration;

(e) meet with or interview a child who is the subject of a child-related dispute in accordance with Rule 12;

(f) appoint a private expert at the expense of the parties;

(g) administer an oath or affirmation and issue a subpoena for the attendance of a witness or the production of documents and other evidence at a hearing;

(h) compel discovery concerning the family law dispute and determine the date, time, and place of discovery;

(i) determine the admissibility and weight of evidence;

(j) permit deposition of a witness for use as evidence at a hearing;

(k) for good cause, prohibit a party from disclosing information;

(l) appoint a child's attorney, best interests attorney, or court-appointed advisor for a child at the expense of the parties in accordance with Rule 10;

(m) impose a procedure to protect a party or child from risk of harm, harassment, or intimidation;

(n) allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the parties; and

(o) impose a sanction on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a family law proceeding.

(4) An arbitrator may not allow ex parte communication except to the extent allowed in a

family law proceeding for communication with a judge.

M. Recording of Hearing.

(1) Except as otherwise provided in subdivision M(2) or required by law of this state other than this rule, an arbitration hearing need not be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

(2) An arbitrator shall require a verbatim recording be made of any part of an arbitration hearing concerning a child-related dispute.

N. Award.

(1) An arbitrator shall make an award in a record, dated and signed by the arbitrator. The arbitrator shall give notice of the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, under the law and procedural rules of this state other than this rule governing notice in contractual arbitration.

(2) Except as otherwise provided in subdivision N(3), the award under this rule must state the reasons on which it is based unless otherwise agreed by the parties.

(3) An award determining a child-related dispute must state the reasons on which it is based as required by law of this state other than this rule for a court order in a family law proceeding.

(4) An award under this rule is not enforceable as a judgment until confirmed under paragraph O.

O. Confirmation of Award.

(1) After an arbitrator gives notice under subdivision N(1) of an award, including an award corrected under paragraph P, a party may move the court for an order confirming the award.

(2) Except as otherwise provided in subdivision O(3), the court shall confirm an award under this rule if:

(a) the parties agree in a record to confirmation; or

(b) the time has expired for making a motion, and no motion is pending, under paragraphs Q or R.

(3) If an award determines a child-related dispute, the court shall confirm the award under subdivision O(2) if the court finds, after a review of the record if necessary, that the award on its face:

(a) complies with paragraph N and law of this state other than this rule governing a child-related dispute; and

(b) is in the best interests of the child.

(4) On confirmation, an award under this rule is enforceable as a judgment.

P. Correction by Arbitrator of Unconfirmed Award. On motion of a party made not later than 20 days after an arbitrator gives notice under subdivision N(1) of an award, the arbitrator may correct the award:

(1) if the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;

(2) if the award is imperfect in a matter of form not affecting the merits on the issues submitted; or

(3) to clarify the award.

Q. Correction by Court of Unconfirmed Award.

(1) On motion of a party made not later than 90 days after an arbitrator gives notice under subdivision N(1) of an award, including an award corrected under paragraph P, the court shall correct the award if:

(a) the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;

(b) the award is imperfect in a matter of form not affecting the merits of the issues submitted; or

(c) the arbitrator made an award on a dispute not submitted to the arbitrator and the award may be corrected without affecting the merits of the issues submitted.

(2) A motion under this paragraph to correct an award may be joined with a motion to vacate or amend the award under paragraph R.

(3) Unless a motion under paragraph R is pending, the court may confirm a corrected award under paragraph O.

R. Vacation or Amendment by Court of Unconfirmed Award.

(1) On motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was:

(i) evident partiality by the arbitrator;

(ii) corruption by the arbitrator; or

(iii) misconduct by the arbitrator substantially prejudicing the rights of a party;

(c) the arbitrator refused to postpone a hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to paragraph L, so as to prejudice substantially the rights of a party;

(d) the arbitrator exceeded the arbitrator's powers;

(e) no arbitration agreement exists, unless the moving party participated in the arbitration without making a motion under paragraph F not later than the beginning of the first arbitration hearing;

(f) the arbitration was conducted without proper notice under paragraph E of the initiation of arbitration, so as to prejudice substantially the rights of a party; or

(g) a ground exists for vacating the award under law of this state other than this rule.

(2) Except as otherwise provided in subdivision R(3), on motion of a party, the court shall vacate an unconfirmed award that determines a child-related dispute if the moving party establishes that:

(a) the award does not comply with paragraph N or law of this state other than

this rule governing a child-related dispute or is contrary to the best interests of the child;

(b) the record of the hearing or the statement of reasons in the award is inadequate for the court to review the award; or

(c) a ground for vacating the award under subdivision R(1) exists.

(3) If an award is subject to vacation under subdivision R(2)(a), on motion of a party, the court may amend the award if amending rather than vacating is in the best interests of the child.

(4) The court may determine a motion under subdivision R(2) or (3) based on the record of the arbitration hearing and facts occurring after the hearing or may exercise de novo review.

(5) A motion under this paragraph to vacate or amend an award must be filed not later than 90 days:

(a) after an arbitrator gives the party filing the motion notice of the award or a corrected award; or

(b) for a motion under subdivision R(1)(a), after the ground of corruption, fraud, or other undue means is known or by the exercise of reasonable care should have been known to the party filing the motion.

(6) If the court under this paragraph vacates an award for a reason other than the absence of an enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If the reason for vacating the award is that the award was procured by corruption, fraud, or other undue means or there was evident partiality, corruption, or misconduct by the arbitrator, the rehearing must be before another arbitrator.

(7) If the court under this paragraph denies a motion to vacate or amend an award, the court may confirm the award under paragraph O unless a motion is pending under paragraph Q.

S. Clarification of Confirmed Award. If the meaning or effect of an award confirmed under paragraph O is in dispute, the parties may:

(1) agree to arbitrate the dispute before the original arbitrator or another arbitrator; or

(2) proceed in court under law of this state other than this rule governing clarification of a judgment in a family law proceeding.

T. Judgment on Award.

(1) On issuing an order confirming, vacating without directing a rehearing, or amending an award under this rule, the court shall enter judgment in conformity with the order.

(2) On motion of a party, the court may order that a document or part of the arbitration record be sealed or redacted to prevent public disclosure of all or part of the record or award to the extent permitted under law of this state other than this rule.

U. Modification of Confirmed Award or Judgment. If a party moves under Rule 91 for modification of a confirmed award or a judgment on the award based on a fact occurring after confirmation:

(1) the parties shall proceed under the dispute-resolution method specified in the award or judgment; or

(2) if the award or judgment does not specify a dispute-resolution method, the parties may:

(a) agree to arbitrate the modification before the original arbitrator or another arbitrator; or

(b) absent agreement proceed under law of this state other than this rule governing modification of a judgment in a family law proceeding.

V. Enforcement of Confirmed Award.

(1) The court shall enforce an award confirmed under paragraph O, including a temporary award, in the manner and to the same extent as any other order or judgment of a court.

(2) The court shall enforce an arbitration award in a family law dispute confirmed by a court in another state in the manner and to the same extent as any other order or judgment from another state.

W. Appeal.

(1) An appeal may be taken under this rule from:

(a) an order denying a motion to compel arbitration;
(b) an order granting a motion to stay arbitration;
(c) an order confirming or denying confirmation of an award;
(d) an order correcting an award;
(e) an order vacating an award without directing a rehearing; or
(f) a final judgment.

(2) An appeal under this paragraph may be taken as from an order or a judgment in a civil action.

X. Transitional Provision. This rule applies to arbitration of a family law dispute under an arbitration agreement made on or after January 1, 2018. If an arbitration agreement was made before January 1, 2018, the parties may agree in a record that this rule applies to the arbitration.

Rule 20. Form of Documents

~~(a)~~ **Caption.** The first page of every document filed with the court must contain a caption. A caption details the county, state, parties, and title of the document. The caption should be substantially similar to Rule 97, Form 1. ~~Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:~~ Fictitious names are allowed if a party's name is unknown. When the party's true name is discovered, the pleading must be amended accordingly.

~~(2) to the left of the center of the page starting at line 1:~~

~~( ) the filing attorney's or self-represented litigant's name, address, telephone number, and email address; and~~

~~( ) if an attorney, the attorney's State Bar of Arizona attorney identification number; and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney (e.g., petitioner, respondent, third-party plaintiff);~~

~~(5) centered on or below line 6 of the page, the title of the court;~~

~~(6) below the title of the court and to the left of the center of the page, the title of the action or proceeding;~~

~~(7) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;~~

~~(8) immediately below the case number, a brief description of the nature of the document; and~~

~~(9)~~(a) ~~below the document description, the judge to whom the case is assigned (if known).~~

(b) Document Format.

(1) ***Generally.*** Unless the court orders otherwise, all filed documents—other than a document submitted as an exhibit or attachment to a filing—must be prepared as follows:

~~(A)~~(2) *Text and Background.* The text of every document must be black on a plain white background. All documents filed must be single-sided and should have line numbers at double-spaced intervals along the left side of the page.

~~(B)~~(3) *Type Size and Font.* Every typed document must use at least a 13-point type size. ~~The court prefers proportionally spaced serif fonts, such as Times New~~

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~~Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri.~~ Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.

~~(C)~~(4) *Page Size.* Each page of a document must be 8 ½ by 11 inches.

~~( ) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.~~

~~( ) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.~~

~~( ) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.~~

~~(G)~~(5) *Margins and Page Numbers.* Margins must be set as follows: a margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1-1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch; and a margin at the bottom of each page of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.

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~~(H)~~(6) *Handwritten Documents.* Handwritten documents must be legible.~~documents are discouraged but if a document is handwritten, the text must be legibly printed and not include cursive writing or script.~~

~~(I)~~(7) *Line Spacing.* Typed text must be double-spaced~~ and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single spaced. A single spaced quotation must be indented on the left and right sides~~.

~~(J) *Headings and Emphasis.* Headings must be underlined, or be in italics or bold type. Underlining, italics, or bold type also may be used for emphasis.~~

~~(K) *Citations.* Case names and citation signals must be in italics or underlined.~~

~~(L)~~(8) *Originals.* Unless filing electronically or when including attachments, only originals may be filed. ~~If it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.~~

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~~(M)~~(9) *Court Forms.* Printed court forms may deviate from the requirements of this rule, but they must be single-sided. ~~and must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming, or imaging. They may be single-spaced, but any signature lines must be at least two lines below the last line of text. Forms from the superior court's Self Service Center~~ Forms- provided by the superior court -or the Supreme Court~~'s website or the superior court's approved electronic forms~~ meet the requirements of this rule.

~~( ) *Exhibits.* An exhibit that is attached to a pleading is part of the pleading.~~

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~~(d)~~(c) **Electronically Filed Documents.**

(1) Format.

(A) ***File Type.*** A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, or .docx format or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in a format that permits it to be modified, such as .odt or .docx or other format permitted by Administrative Order, and must not be password protected.

(B) ***File Size.*** A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommodate such a limit.

(2) Formats of Attachments.

(A) ***Generally.*** An ~~exhibit and other~~ attachment to an electronically filed document also may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.

(B) ***Official Records.*** A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.

(C) ***Notarized Documents.*** A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.

(D) ***Certified Mail, Return Receipt Card.*** When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card are scanned and filed.

(E) ***National Courier Service.*** When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

(3) Bookmarks and Hyperlinks.

(A) ***Bookmarks.*** A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.

(B) ***Hyperlinks.*** A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Material that is not in the official court record does not become part of the official record merely because it is made accessible by a hyperlink. The use of hyperlinks is encouraged.

(C) ***Originals.*** An electronically filed document (or a scanned copy of a document filed in hard copy) constitutes an "original" under Arizona Rule of Evidence 1002.

NOTE: This version is based on restyled Civil Rule 5.2.

Rule 20. Form of Documents

(a) Caption. The first page of every document filed with the court must contain a caption. A caption details the county, state, parties, and title of the document. The caption should be substantially similar to Rule 97, Form 1. Fictitious names are allowed if a party's name is unknown. When the party's true name is discovered, the pleading must be amended accordingly.

(b) Document Format.

(1) ***Generally.*** Unless the court orders otherwise, all filed documents—other than a document submitted as an exhibit or attachment to a filing—must be prepared as follows:

(2) *Text and Background.* The text of every document must be black on a plain white background. All documents filed must be single-sided and should have line numbers at double-spaced intervals along the left side of the page.

(3) *Type Size and Font.* Every typed document must use at least a 13-point type size. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.

(4) *Page Size.* Each page of a document must be 8 ½ by 11 inches.

(5) *Margins and Page Numbers.* Margins must be set as follows: a margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1-1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch; and a margin at the bottom of each page of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.

(6) *Handwritten Documents.* Handwritten documents must be legible.

(7) *Line Spacing.* Typed text must be double-spaced.

(8) *Originals.* Unless filing electronically or when including attachments, only originals may be filed.

(9) *Court Forms.* Printed court forms may deviate from the requirements of this rule, but they must be single-sided. Forms provided by the superior court or the Supreme Court meet the requirements of this rule.

(c) Electronically Filed Documents.

(1) Format.

(A) ***File Type.*** A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, or .docx format or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in a format that permits it to be modified, such as .odt or .docx or other format permitted by Administrative Order, and must not be password protected.

(B) ***File Size.*** A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommodate such a limit.

(2) Formats of Attachments.

(A) ***Generally.*** An attachment to an electronically filed document also may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.

(B) ***Official Records.*** A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.

(C) ***Notarized Documents.*** A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.

(D) ***Certified Mail, Return Receipt Card.*** When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card are scanned and filed.

(E) ***National Courier Service.*** When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

(3) Bookmarks and Hyperlinks.

(A) ***Bookmarks.*** A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.

(B) ***Hyperlinks.*** A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Material that is not in the official court record does not become

part of the official record merely because it is made accessible by a hyperlink. The use of hyperlinks is encouraged.

(C) ***Originals.*** An electronically filed document (or a scanned copy of a document filed in hard copy) constitutes an "original" under Arizona Rule of Evidence 1002.

NOTE: This version is based on restyled Civil Rule 5.2.

Rule 28. Required Response

(a) ~~Verified~~ Response. In an action for annulment, dissolution, legal separation, legal decision - making or parenting time, dissolution of covenant marriage, legal separation in a covenant marriage, paternity or maternity, ~~an opposing~~ a party who is served with a petition and summons -must file a timely response with the clerk and provide a copy to the assigned judicial officer and other parties. ~~The~~ A party's response must include a verification or declaration -under ~~r~~Rule 14~~(b) verification~~.

(b) Failure to File a Response. If a party who is served does not file a response, the petitioner has the right to request a default and ~~to~~ obtain a default judgment against that party under Rule 44.

[**JWR Note:** The rules elsewhere refer to "opposing party." The adjective "opposing" may not be needed but if it is eliminated here, it also needs to be eliminated elsewhere.]

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Rule 28. Required Response

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(b) Failure to File a Response. If a party who is served does not file a response, the petitioner has the right to request a default and obtain a default judgment against that party under Rule 44.

[**JWR Note:** The rules elsewhere refer to "opposing party." The adjective "opposing" may not be needed but if it is eliminated here, it also needs to be eliminated elsewhere.]

Rule 30. ~~Form of Pleading~~ [Reserved]

~~(a) Caption; Names of Parties. Every pleading must have a caption in the form prescribed by Rule 20(a), along with the pleading's designation under Rule 24. The title caption of the complaint must must name all the parties; the title of other pleadings and documents, after naming the first party on each side, may refer generally to other parties by the designation "*et al.*"~~

~~(b)~~(a) ~~Paragraphs; Separate Statements.~~ ~~A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances.~~ [Move to Rule 29]~~A later pleading may refer by number to a paragraph in an earlier pleading.~~

~~(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.~~

~~(d) Using a Fictitious Name to Identify a Respondent. If the name of the respondent is unknown to the petitioner, the respondent may be designed in the pleadings or proceeding by any name. If the respondent's true name is discovered, the pleading or proceeding should be amended accordingly.~~

(b) ~~Using a Fictitious Name to Identify a Respondent.~~ ~~Fictitious names are allowed if a party's name is unknown. When the party's true name is discovered, the pleading must be amended accordingly.~~ [Move to Rule 20 or 29]

~~(e)~~ (will go back to group 1) ~~Annette's note: Rule 20(a) no longer exists.~~

~~JWR NOTE: Same as restyled Civil Rule (and Federal Rule) 10(a)-(c), except the third sentence of Rule 10(b) was not included because the Family Law Rule does not contain the counterpart to the third sentence found in the prior Civil Rule.~~

~~Rule 30(d) comes from restyled Civil Rule 10(d). Note that Civil Rule 10(d) says that the complaint "should" be amended. The prior civil rule and the current Family Law Rule say "may" be amended.~~

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Rule 30. [Reserved]

(a) . [Move to Rule 29]

(b) . [Move to Rule 20 or 29]

(will go back to group 1) Annette's note: Rule 20(a) no longer exists.

Rule 31. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; Assisting Filing by Self-Represented Person; Verification

(a) Signature.

(1) ***Generally.*** Every pleading, written motion, and other document filed with the court or served must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.

(2) ***Electronic Filings.*** A person may sign an electronically filed document by placing the symbol "/s/" on the signature line above the person's name. An electronic signature has the same force and effect as a signature on a document that is not filed electronically. The court may treat a document that was filed using a person's electronic filing registration information as a filing that was made or authorized by that person.

(3) ~~***Filings by Multiple Parties***~~***Signing for Another Party*****.** A person filing a document containing more than one place for a signature—such as a stipulation—may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission" as any non-filing party's signature.

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a [good faith argument for. . .] nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions [are well-grounded in fact,~~;~~ and] have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) ***Generally.*** If a pleading, motion, or other document is signed in violation of this rule, the court—on motion or on its own—may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

(2) ***Consultation.*** Before filing a motion for sanctions under this rule, the moving party must:

(A) attempt to resolve the matter by good faith consultation as provided in Rule XX; and

(B) if the matter is not satisfactorily resolved by consultation, ~~serve~~ provide the opposing party with written notice of the specific conduct that allegedly violates Rule 31(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 31(c)(3).

(3) **Motion for Sanctions.** A motion for sanctions under this rule must:

(A) be made separately from any other motion;

(B) describe the specific conduct that allegedly violates Rule 31(b);

(C) be accompanied by a Rule XX good faith consultation certificate; and

(D) attach a copy of the written notice provided to the opposing party under Rule 31(c)(2)(B).

~~**(d) Assisting Filing by Self-Represented Person.** An attorney may help draft a pleading, motion, or other document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or other document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which case the attorney must make an independent reasonable inquiry into the facts.~~

~~(e)~~(d) ~~**Verification.** If a rule or statute requires a pleading to be verified, the pleading must be accompanied by an affidavit by the party or a person acting on the party's behalf who is acquainted with the facts attesting under oath that, to the best of the party's or person's knowledge, the facts set forth in the pleading are true and accurate.~~
(ATB note: This section should refer to R. 14, "Sworn Written Declaration")

JWR NOTE: Parts (a) through (d) are drawn from restyled Civil Rule 11. Note that the standards in (b)(2) and (b)(3) differ from the current rule. The Civil Justice Reform Committee has proposed amendments that would make the rule more demanding on the pleader. The current standard is shown in brackets in text.

Part (d) is drawn from restyled Civil Rule 8(i). The Civil Rules Task Force moved the verification provision formerly in Civil Rule 11(b) to a new Civil Rule 8(i).

Part (c) refers to a "good faith consultation certificate," which is provided in Civil Rule 7.1(h). The Family Law Rules currently do not have a counterpart to that rule.

Rule 31. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; Assisting Filing by Self-Represented Person; Verification

(a) Signature.

(1) ***Generally.*** Every pleading, written motion, and other document filed with the court or served must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.

(2) ***Electronic Filings.*** A person may sign an electronically filed document by placing the symbol "/s/" on the signature line above the person's name. An electronic signature has the same force and effect as a signature on a document that is not filed electronically. The court may treat a document that was filed using a person's electronic filing registration information as a filing that was made or authorized by that person.

(3) ***Signing for Another Party.*** A person filing a document containing more than one place for a signature—such as a stipulation—may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission" as any non-filing party's signature.

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a [good faith argument for. . .] nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions [are well-grounded in fact, and] have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) ***Generally.*** If a pleading, motion, or other document is signed in violation of this rule, the court—on motion or on its own—may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

(2) ***Consultation.*** Before filing a motion for sanctions under this rule, the moving party must:

(A) attempt to resolve the matter by good faith consultation as provided in Rule XX; and

(B) if the matter is not satisfactorily resolved by consultation, provide the opposing party with written notice of the specific conduct that allegedly violates Rule 31(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 31(c)(3).

(3) **Motion for Sanctions.** A motion for sanctions under this rule must:

(A) be made separately from any other motion;

(B) describe the specific conduct that allegedly violates Rule 31(b);

(C) be accompanied by a Rule XX good faith consultation certificate; and

(D) attach a copy of the written notice provided to the opposing party under Rule 31(c)(2)(B).

(d) (ATB note: This section should refer to R. 14, "Sworn Written Declaration")

JWR NOTE: Parts (a) through (d) are drawn from restyled Civil Rule 11. Note that the standards in (b)(2) and (b)(3) differ from the current rule. The Civil Justice Reform Committee has proposed amendments that would make the rule more demanding on the pleader. The current standard is shown in brackets in text.

Part (d) is drawn from restyled Civil Rule 8(i). The Civil Rules Task Force moved the verification provision formerly in Civil Rule 11(b) to a new Civil Rule 8(i).

Part (c) refers to a "good faith consultation certificate," which is provided in Civil Rule 7.1(h). The Family Law Rules currently do not have a counterpart to that rule.

Rule 40. Summons

(a) Issuance; Service.

~~(1) ***Pleading Defined.*** As used in this rule, Rule 41, and Rule 42, "pleading" means any of the pleadings authorized by Rule 24 that bring a party into an action.~~

(1) ***When Required.*** Pleadings that require a summons are petitions for dissolution, legal separation, annulment, ~~or for~~ paternity or maternity, or~~ to establish legal decision-making or parenting time by a parent. [consider cross reference to Rule 27 or comment]~~

(2) ~~***Issuance***~~ ***Issuance.*** ~~On or after filing a pleading, t~~The ~~filing~~ party filing one of the pleadings described in (a)(1) ~~may~~ must present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the filing party for service. A summons—or a copy of the summons if addressed to multiple parties--must be issued for each party to be served.

(3) ***Service.*** A summons must be served with a copy of the pleading. Service must be completed as required by this rule, Rule 41, or Rule 42, as applicable.

(b) Contents~~; Replacement Summons~~.

(1) ~~***Contents***~~ ***What a Summons Must Include.*** A summons must:

(A) name the court and the parties;

(B) ~~be~~ directed to the party to be served;

(C) state the name and address of the attorney of the party serving the summons or—if unrepresented—the party's name and address;

(D) state the time within which the ~~defendant~~respondent must appear and ~~defend~~ respond;

(E) ~~notify~~ the party to be served that a failure to appear and ~~defend~~ respond will result in a default judgment against that party for the relief demanded in the pleading;

(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding";

(G) ~~be~~ signed by the clerk; and

(H) bear the court's seal.

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~~(2)~~ ***Actions for Annulment, Dissolution ~~or~~ of Marriage, or Legal Separation.*** ~~In an action for annulment, dissolution of marriage, or legal separation, the summons also must contain a statement that either spouse, or both spouses, may file in the conciliation court a petition invoking the court's jurisdiction for the purpose of preserving the marriage by effecting conciliation between the parties, or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issues raised in the pleading. If a county has established a conciliation court, the summons in an action for dissolution, legal separation, or annulment that was filed in that county must also contain a statement that either spouse, or both spouses, may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies. [Dean's alternative language: "~~A summons in an action for dissolution, legal separation, or annulment filed in a county with an established conciliation court must also contain a statement that either spouse~~, or both spouses,~~ may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies.~~"~~]

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~~(3)~~ **(c) Replacement Summons.** If a summons is returned without being served, or if it has been lost, a party may ~~ask~~ present a replacement summons for the clerk to issue ~~a replacement summons~~ in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 40(i) for service of the original summons.

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~~(c)~~**(d) Who May Serve ~~Process~~ a Summons.**

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(1) ***Generally.*** Service of ~~process~~ a summons must be made by a sheriff, a sheriff's deputy, a constable, a constable's deputy, a private process server certified under the Arizona Code of Judicial Administration § 7-204 ~~and Rule 40(d)~~, or any other person specially appointed by the court. Service of ~~process~~ a summons may also be made by a party or that party's attorney ~~if expressly authorized by these rules~~ as expressly authorized under Rules 41 or 42.

(2) ***Special Appointment.***

(A) *Qualifications.* A specially appointed person must be at least 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) *Procedure for Appointment.* A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion must be accompanied by a

proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

~~**(d) Statewide Certification of Private Process Servers.** A person seeking certification as a private process server must file with the clerk an application under Arizona Code of Judicial Administration § 7-204. Upon approval of the court or presiding judge of the county in which the application is filed, the clerk will register the person as a certified private process server, which will remain in effect unless and until the certification is withdrawn by the court. The clerk must maintain a register for this purpose. A certified private process server will be entitled to serve in that capacity for any state court within Arizona.~~

(e) Service of Summons in Title IV-D Cases. If certified under Rule 40(d), a Field Locate Investigator employed by the Department of Economic Security~~'s Office of Special Investigations the Inspector General~~ may complete service in the manner set forth in Rule 41(c) in any action initiated by the State for the determination of paternity, or for the establishment, modification, or enforcement of an order of support.

(f) Accepting ~~or Waiving~~ Service; Voluntary Appearance. ~~There are two ways to accomplish service with the assent of the served party—waiver and acceptance~~ A party may accept service. A party also may voluntarily appear without being served.

~~**(1) *Waiving Service.*** A party subject to service under this rule, Rule 41, or Rule 42 may waive issuance or service. The waiver of service must be in writing, signed by that party or that party's authorized agent or attorney, be notarized, and be filed in the action. A party who waives service has 60 days after the request for a waiver was sent, or 90 days after it was sent to the defendant or third-party defendant outside any judicial district of the United States, to serve a responsive pleading.~~

~~(g)~~(1) ***Accepting Service.*** A party subject to service under this rule, Rule 41, ~~or~~ Rule 42, or Rule 91, may accept service. The acceptance of service must be in writing, signed by that party or that party's authorized agent or attorney and be filed in the action. A party who accepts service must serve a responsive pleading within the time provided in Rule 32(a)(1).

~~(h)~~(A) The petitioner must include with the documents provided to the respondent a form for acceptance of service. The form must list the documents that are provided with the acceptance.

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~~(i)~~(B) Petitioner must mail, including a self-addressed stamped envelope, or deliver the petition and other documents to the respondent. If the respondent agrees to sign an acceptance of service, the acceptance must be signed before a clerk of the court or a notary.

~~(j)~~(C) The respondent may file the acceptance of service with the court or return it to the petitioner, who must file the acceptance with the clerk to complete service.

~~(1)~~(D) The respondent's signature is not an admission of the allegations of the petition.

(2) ***Voluntary Appearance.***

(A) *In Open Court.* A party on whom service is required may, in person or by an attorney ~~or authorized agent~~, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes.

(B) *By Responsive Pleading.* The filing of a pleading responsive to a pleading allowed under Rule 24 constitutes an appearance by the party.

(3) ***Effect.*** ~~Waiver, a~~ Acceptance~~,~~ ~~and~~ or appearance under (f)(1) or~~,~~ (f)(2)~~, and (f)(3)~~ have the same force and effect as if a summons had been issued and served.

~~(k)~~(g) **Return; Proof of Service.**

(1) ***Timing.*** If service is not accepted ~~or waived~~, and no voluntary appearance is made, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to ~~process~~ summons and petition.

(2) ***Service by the Sheriff.*** If a summons is served by a sheriff or deputy sheriff, the return must be officially marked on or attached to the proof of service and promptly filed with the court.

(3) ***Service by Others.*** If served by a person other than a sheriff or deputy sheriff, the return must be promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the server is a registered private process server, the affidavit must clearly identify the county in which the server is registered.

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(4) ***Service by Publication.*** If the summons is served by publication, the return of the person making such service must be made as provided in Rules 41(X) and 42(X).

(5) ***Service Outside the United States.*** Service outside the United States must be proved as follows:

(A) if effected under Rule 42(X) as provided in the applicable treaty or convention; or

(B) if effected under Rule 42(X), by a receipt signed by the addressee, or other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(6) ***Validity of Service***. Failure to ~~make~~ file proof of service does not affect the validity of service.

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~~(l)~~(h) **Amending Process or Proof of Service.** The court may permit process or proof of service to be amended.

~~(m)~~(i) **Time Limit for Service.** If a ~~defendant~~ respondent is not served with process within ~~90~~ 120 days after the ~~complaint~~ petition is filed, the court—on motion, or on its own after notice to the petitioner—must dismiss the action without prejudice against that respondent or order that service be made within a specified time. But if the petitioner shows good cause for the failure, the court must extend the time for service for an appropriate period. ~~This~~ Rule 40(i) does not apply to service in a foreign country under Rules 42(i), (j), (k), and (l), or to the service of a paternity action described in (j).

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~~(n)~~(j) **Time Limit for Service in Paternity Actions Involving Adoption.** A potential father who has been served with notice of a planned adoption under A.R.S. § 8-106(G) must file with the court and serve on the mother—or an attorney or agency that is licensed in Arizona and is representing the mother—a copy of the verified petition to establish paternity and summons no later than 30 days after the notice of the planned adoption is served. The court must dismiss any proceeding that is barred under A.R.S. § 8-106(J).

NOTE: Subparts (a), (b)(1) & (3), (c), (d), (f), (g), (h), and (i) are drawn from restyled Civil Rule 4. Subparts (b)(2), (e), and (j) are drawn from the current Family Law Rules 40(B), (E), and (J).

Rule 40. Summons

(a) Issuance; Service.

(1) ***When Required.*** Pleadings that require a summons are petitions for dissolution, legal separation, annulment, ~~for~~ paternity or maternity, or to establish legal decision-making or parenting time by a parent. [consider cross reference to Rule 27 or comment]

(2) ***Issuance.*** The party filing one of the pleadings described in (a)(1) must present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the filing party for service. A summons—or a copy of the summons if addressed to multiple parties--must be issued for each party to be served.

(3) ***Service.*** A summons must be served with a copy of the pleading. Service must be completed as required by this rule, Rule 41, or Rule 42, as applicable.

(b) Contents.

(1) ***What a Summons Must Include.*** A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the attorney of the party serving the summons or—if unrepresented—the party's name and address;

(D) state the time within which the respondent must appear and ~~defend~~ respond;

(E) notify the party to be served that a failure to appear and ~~defend~~ respond will result in a default judgment against that party for the relief demanded in the pleading;

(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding";

(G) be signed by the clerk; and

(H) bear the court's seal.

(2) ***Actions for Annulment, Dissolution of Marriage, or Legal Separation.*** ~~If a county has established a conciliation court, the summons in an action for dissolution, legal separation, or annulment that was filed in that county must also contain a statement that either spouse, or both spouses, may file a petition that~~

~~requests the conciliation court's assistance in preserving the marriage or resolving marital controversies. [Dean's alternative language: "~~A summons in an action for dissolution, legal separation, or annulment filed in a county with an established conciliation court must also contain a statement that either spouse~~, or both spouses,~~ may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies.~~"]~~

(c) Replacement Summons. If a summons is returned without being served, or if it has been lost, a party may present a replacement summons for the clerk to issue in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 40(i) for service of the original summons.

(d) Who May Serve a Summons.

(1) ***Generally.*** Service of a summons must be made by a sheriff, a sheriff's deputy, a constable, a constable's deputy, a private process server certified under the Arizona Code of Judicial Administration § 7-204, or any other person specially appointed by the court. Service of a summons may also be made by a party or that party's attorney as expressly authorized under Rules 41 or 42.

(2) ***Special Appointment.***

(A) *Qualifications.* A specially appointed person must be at least 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) *Procedure for Appointment.* A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

(e) Service of Summons in Title IV-D Cases. If certified under Rule 40(d), a Field Locate Investigator employed by the Department of Economic Security~~'s Office of Special Investigations the Inspector General~~ may complete service in the manner set forth in Rule 41(c) in any action initiated by the State for the determination of paternity, or for the establishment, modification, or enforcement of an order of support.

(f) Accepting Service; Voluntary Appearance. A party may accept service. A party also may voluntarily appear without being served.

(1) ***Accepting Service.*** A party subject to service under this rule, Rule 41, Rule 42, or Rule 91, may accept service. The acceptance of service must be in writing, signed by that party or that party's authorized agent or attorney and be filed in the action. A party who accepts service must serve a responsive pleading within the time provided in Rule 32(a)(1).

(A) The petitioner must include with the documents provided to the respondent a form for acceptance of service. The form must list the documents that are provided with the acceptance.

(B) Petitioner must mail, including a self-addressed stamped envelope, or deliver the petition and other documents to the respondent. If the respondent agrees to sign an acceptance of service, the acceptance must be signed before a clerk of the court or a notary.

(C) The respondent may file the acceptance of service with the court or return it to the petitioner, who must file the acceptance with the clerk to complete service.

(D) The respondent's signature is not an admission of the allegations of the petition.

(2) ***Voluntary Appearance.***

(A) *In Open Court.* A party on whom service is required may, in person or by an attorney, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes.

(B) *By Responsive Pleading.* The filing of a pleading responsive to a pleading allowed under Rule 24 constitutes an appearance by the party.

(3) ***Effect.*** ~~Waiver, a~~ Acceptance~~,~~ ~~and~~ or appearance under (f)(1) or~~,~~ (f)(2)~~, and (f)(3)~~ have the same force and effect as if a summons had been issued and served.

(g) Return; Proof of Service.

(1) ***Timing.*** If service is not accepted, and no voluntary appearance is made, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to summons and petition.

(2) ***Service by the Sheriff.*** If a summons is served by a sheriff or deputy sheriff, the return must be officially marked on or attached to the proof of service and promptly filed with the court.

(3) ***Service by Others.*** If served by a person other than a sheriff or deputy sheriff, the return must be promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the server is a registered private process server, the affidavit must clearly identify the county in which the server is registered.

(4) ***Service by Publication.*** If the summons is served by publication, the return of the person making such service must be made as provided in Rules 41(X) and 42(X).

(5) ***Service Outside the United States.*** Service outside the United States must be proved as follows:

(A) if effected under Rule 42(X) as provided in the applicable treaty or convention; or

(B) if effected under Rule 42(X), by a receipt signed by the addressee, or other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(6) ***Validity of Service***. Failure to ~~make~~ file proof of service does not affect the validity of service.

(h) Amending Process or Proof of Service. The court may permit process or proof of service to be amended.

(i) Time Limit for Service. If a respondent is not served with process within 120 days after the petition is filed, the court—on motion, or on its own after notice to the petitioner—must dismiss the action without prejudice against that respondent or order that service be made within a specified time. But if the petitioner shows good cause for the failure, the court must extend the time for service for an appropriate period. ~~This~~ Rule 40(i) does not apply to service in a foreign country under Rules 42(i), (j), (k), and (l), or to the service of a paternity action described in (j).

(j) Time Limit for Service in Paternity Actions Involving Adoption. A potential father who has been served with notice of a planned adoption under A.R.S. § 8-106(G) must file with the court and serve on the mother—or an attorney or agency that is licensed in Arizona and is representing the mother—a copy of the verified petition to establish paternity and summons no later than 30 days after the notice of the planned adoption is served. The court must dismiss any proceeding that is barred under A.R.S. § 8-106(J).

NOTE: Subparts (a), (b)(1) & (3), (c), (d), (f), (g), (h), and (i) are drawn from restyled Civil Rule 4. Subparts (b)(2), (e), and (j) are drawn from the current Family Law Rules 40(B), (E), and (J).

208 Ariz. 70
Court of Appeals of Arizona,
Division 1, Department C.

MASTER FINANCIAL, INC., Petitioner,

v.

The Honorable R. Jeffrey WOODBURN, Commissioner of the Superior Court of the State of Arizona, in and for the County of Maricopa, Respondent Judge,
Michael L. Hillman, Real Party in Interest.

No. 1 CA-SA 04-0052.
May 27, 2004.
As Amended June 7, 2004.

Synopsis

Background: Creditor brought civil action against debtor, seeking recovery of monetary damages resulting from default on and breach of promissory note. The Superior Court, Maricopa County, No. CV 2002-024810, R. Jeffrey Woodburn, Commissioner, denied creditor's motion for default judgment. Creditor appealed, and the Court of Appeals redesignated the matter as a special action.

Holding: The Court of Appeals, Garbarino, J., held that under due process principles, a plaintiff pursuing a money judgment against a defendant whose residence is unknown but whose last known residence was within the state, or who has avoided service, can serve the defendant by publication in accordance with the requirements of the rules of civil procedure.

Jurisdiction accepted; relief granted; remanded.

West Headnotes (13)

Change View

1 **Constitutional Law** Form and adequacy
Process Inability to make personal service
Under due process principles, a plaintiff pursuing a money judgment against a defendant whose residence is unknown but whose last known residence was within the state, or who has avoided service, can serve the defendant by publication in accordance with the requirements of the rules of civil procedure. U.S.C.A. Const.Amend. 14; 16 A.R.S. Rules Civ.Proc., Rule 4.1(n).

4 Cases that cite this headnote

2 **Courts** Issuance of Prerogative or Remedial Writs
Trial court's order denying creditor's motion for default judgment against debtor was reviewable by Court of Appeals by special action proceeding, because there was no equally plain, speedy, and adequate remedy by appeal. A.R.S. § 12-120.21, subd. A, par. 4; 16 A.R.S. Rules Civ.Proc., Rule 55(b); 17B A.R.S. Special Actions Rules of Proc., Rule 1(a).

3 **Appeal and Error** Judgment by default or decree pro confesso
Although an order setting aside a default judgment is appealable as a special order after judgment, an order vacating entry of default is not appealable. 16 A.R.S. Rules Civ.Proc., Rule 55(a, b).

1 Case that cites this headnote

Constitutional Law Form and adequacy

4 Service of process by publication satisfies due process minimum notice requirements if it is the best means of notice under the circumstances and it is reasonably calculated to apprise the interested parties of the pendency of the action. U.S.C.A. Const.Amend. 14; 16 A.R.S. Rules Civ.Proc., Rule 4.1(n).

6 Cases that cite this headnote

5 **Constitutional Law** Form and adequacy
Service of process by publication is constitutionally sufficient, under due process principles, for a defendant who willfully leaves the state to evade service of process. U.S.C.A. Const.Amend. 14.

1 Case that cites this headnote

6 **Constitutional Law** Non-Residents
Service of process by publication is constitutionally sufficient, under due process principles, for non-resident motorists who cannot be located through due diligence. U.S.C.A. Const.Amend. 14.

1 Case that cites this headnote

7 **Constitutional Law** Form and adequacy
Process Inability to make personal service
Process Mode and Sufficiency of Publication
Service of process by publication is sufficient, under due process principles, where a plaintiff has exercised due diligence to personally serve a resident defendant at a last known address within the state and has complied with the publication procedures in the rules of civil procedure. U.S.C.A. Const.Amend. 14; 16 A.R.S. Rules Civ.Proc., Rule 4.1(n).

7 Cases that cite this headnote

8 **Judgment** Necessity for excuse
Judgment Time for Application
A party seeking relief from an entry of default or default judgment must establish that: (1) the failure to answer within the time required by law was due to excusable neglect; (2) relief was promptly sought; and (3) a meritorious defense to the action existed. 16 A.R.S. Rules Civ.Proc., Rule 60(c)(1).

7 Cases that cite this headnote

9 **Judgment** Mistake, surprise, or excusable neglect in general
A defendant's neglect or inadvertence is compared to that of a reasonably prudent person under the circumstances, for purposes of relief from entry of default or default judgment. 16 A.R.S. Rules Civ.Proc., Rule 60(c)(1).

3 Cases that cite this headnote

10 **Judgment** Mistake, surprise, or excusable neglect in general
A defendant seeking relief from entry of default or default judgment must allege facts sufficient to demonstrate that the neglect is excusable, not merely unexplained. 16 A.R.S. Rules Civ.Proc., Rule 60(c)(1).

1 Case that cites this headnote

11 **Judgment** Invalidity of judgment in general
Judgment Invalid or unauthorized judgments
The court must vacate a void judgment, even in the case of unreasonable delay by the party seeking relief from the judgment. 16 A.R.S. Rules Civ.Proc., Rule 60(c)(4).

3 Cases that cite this headnote

12 **Judgment** Jurisdiction of cause of action
Judgment Jurisdiction of the person and subject-matter
Motions Jurisdiction
A judgment or order is void if the court lacked jurisdiction over the subject matter, over the person, or over the particular judgment or order entered.

5 Cases that cite this headnote

13 **Judgment** Necessity for excuse
Judgment Necessity for showing meritorious cause of action or defense
Judgment Time for Application
A party seeking relief from a void judgment need not show that its failure to file a timely answer was excusable, that it acted promptly in seeking relief from the default judgment, or that it had a meritorious defense. 16 A.R.S. Rules Civ.Proc., Rule 60(c)(1).

8 Cases that cite this headnote

Attorneys and Law Firms

***1237 *71** Miles, Bauer, Bergstrom & Winters, LLP By Jeremy T. Bergstrom, Henderson, NV, Attorneys for Petitioner.

Opinion

GARBARINO, Judge.

1 ¶ 1 We hold that a plaintiff pursuing a money judgment against a defendant whose residence is unknown but whose last known residence was within the state, or who has avoided service, can serve the defendant by publication in accordance with the requirements of Rule 4.1(n) of the Arizona Rules of Civil Procedure.

¶ 2 Petitioner Master Financial, Inc. (MFI) seeks special action relief from the denial of its motion for default judgment.[1] MFI argues that the trial court erred by concluding that money judgments were not available in cases where service was effectuated by publication, except in cases involving absent motorists. Specifically, MFI contends that Rule 4.1(n) does not require personal service to obtain a money judgment against Hillman. For the following reasons, we accept jurisdiction and grant relief.

FACTUAL AND PROCEDURAL HISTORY

¶ 3 This special action arises from a civil action brought by MFI against Hillman seeking recovery of monetary damages resulting from a default and a breach of a promissory note. MFI attempted personal service upon Hillman on five separate occasions between December 2002 and January 2003 at Hillman's last known address in Phoenix, Arizona. After concluding that personal service was not possible, MFI obtained an order from the trial court authorizing service by publication. *See* Ariz. R. Civ. P. 4.1(n).

¶ 4 After the time for filing a responsive pleading had expired, MFI filed an application for entry of default with the clerk of the court. *See* Ariz. R. Civ. P. 55(a). In October 2003, MFI moved for default judgment against Hillman. *See* Ariz. R. Civ. P. ***1238 *72** 55(b)(1). The trial court denied the motion, stating that money damages are not available in cases where service of process was achieved through publication.

JURISDICTION

2 3 ¶ 5 Special action jurisdiction is appropriate when there is no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a); Ariz.Rev.Stat. § 12–120.21(A)(4) (2003); *see also State ex rel. Romley v. Fields*, 201 Ariz. 321, 323, ¶ 4, 35 P.3d 82, 84 (App.2001). This Court has previously acknowledged the distinction between a default judgment from the court and an entry of default by the clerk. *See Sullivan & Brugnatelli Adver. Co., Inc. v. Century Capital Corp.*, 153 Ariz. 78, 79, 734 P.2d 1034, 1035 (App.1986); *see also* Ariz. R. Civ. P. 55(a), (b). Although an order setting aside a default judgment is appealable as a special order after judgment, *see*

A.R.S. § 12–2101(C) (2003), an order vacating entry of default is not appealable. *Sanders v. Cobble*, 154 Ariz. 474, 475–76, 744 P.2d 1, 2–3 (1987) (citing *Richas v. Superior Court*, 133 Ariz. 512, 513, 652 P.2d 1035, 1036 (1982)). Thus, review by special action proceeding is appropriate. *Richas*, 133 Ariz. at 513, 652 P.2d at 1036.

DISCUSSION

I. *The History of Service of Process by Publication*

¶ 6 Prior to 1991, the rules governing service of process were found in Rules 4(e)(1) and 4(e)(3) of the Arizona Rules of Civil Procedure. Rule 4(e)(3) provided, in pertinent part, that

> *[w]here by law personal service is not required,* and a person is subject to service under Section 4(e)(1), such service may be made by either of the methods set forth in Section 4(e)(2) or by publication.

(Emphasis added.) Interpreting this rule, this Court and the Arizona Supreme Court have held that service by publication is not proper for *in personam* actions. *See Mervyn's, Inc. v. Superior Court*, 144 Ariz. 297, 300, 697 P.2d 690, 693 (1985); *Price v. Sunmaster*, 27 Ariz.App. 771, 775, 558 P.2d 966, 970 (1976); *Ticey v. Randolph*, 5 Ariz.App. 136, 137, 424 P.2d 178, 179 (1967); *Knight v. Mewszel*, 3 Ariz.App. 295, 297, 413 P.2d 861, 863 (1966), *overruled by Walker v. Dallas*, 146 Ariz. 440, 706 P.2d 1207 (1985).

¶ 7 Beginning with *Knight* in 1966, courts have construed the phrase "where by law personal service is not required" to require personal service for money judgments. 3 Ariz.App. at 297, 413 P.2d at 863. The issue in *Knight* was whether service of process by publication upon a resident defendant was sufficient to confer jurisdiction upon the court to enter a money judgment against the defendant. *Id.* at 295, 413 P.2d at 861. This Court held that publication was insufficient and, thus, the lower court lacked jurisdiction to enter judgment against the defendant. *Id.* at 297, 413 P.2d at 863.

¶ 8 One year later, the *Ticey* court was asked to abandon *Knight* in favor of the "minimum contacts" rule adopted by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). *Ticey*, 5 Ariz.App. at 138, 424 P.2d at 180. This Court declined to overrule *Knight*, noting that to do so would permit service by publication under this rule any time there were minimum contacts and the defendant was a non-resident or any other type of defendant specified in Rule 4(e)(1). *Id.* This Court also noted that the rules governing service by publication should be strictly construed. *Id.*

¶ 9 In 1976, the *Price* court held that "in order to obtain a judgment *in personam*, personal service on the defendant is required." 27 Ariz.App. at 775, 558 P.2d at 970. The use of service by publication has traditionally been limited to *in rem* or *quasi in rem* actions. *Id.*

¶ 10 In 1985, the supreme court in *Mervyn's* reaffirmed this rule, stating that "where the action is to obtain a money judgment against a defendant, traditionally termed an *in personam* judgment, personal service is required." 144 Ariz. at 300, 697 P.2d at 693 (holding that garnishment proceedings are considered *quasi in rem* and, thus, service by publication is sufficient to satisfy minimum due process requirements). ***1239 *73** Later that same year, the supreme court issued its decision in *Walker*. Citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), *Walker* limited publication under Rule (4)(e)(3) to cases involving absent non-resident motorists if the insurer is on notice of the suit. 146 Ariz. at 445, 706 P.2d at 1212.

¶ 11 In *Saucedo v. Engelbrecht*, however, this Court seemed to depart from the traditional rule regarding service by publication. 149 Ariz. 18, 716 P.2d 79 (App.1986). This Court reiterated the holding in *Walker* that service by publication is sufficient to confer *in personam* jurisdiction over a non-resident motorist if that motorist cannot be served personally and if the insurer has notice. *Id.* at 19, 716 P.2d at 80. However, this Court went on to hold that "[w]e see no constitutional distinction that would prohibit service by publication over a resident, where due diligence is exercised and he cannot be found. A finding of due diligence is a jurisdictional prerequisite." *Id.* This Court found

that the plaintiff had exercised due diligence to allow service by publication on the defendant. *Id.*

¶ 12 Petitioner relies, in part, on the *Saucedo* holding in support of his contention that service by publication was proper in this case to support a default judgment. Despite this Court's apparent departure in *Saucedo* from the traditional rule of not allowing service by publication for a money judgment, we believe Rule 4.1(n) and the accompanying state bar committee note to be more persuasive because the *Saucedo* court relied on the now outdated Rule 4(e)(3).

II. *The Current Rule Governing Service by Publication*

¶ 13 Rule 4.1(n), the current rule governing service by publication, states that

> [w]here the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart.

Absent from the amended language is the phrase "where by law personal service is not required," which was contained in the previous Rule 4(e)(3). Considering that the general rule adopted in Arizona relied on this language for support, we find the absence of this language in the current rule to be instructive. Strictly construing the language of Rule 4.1(n), we conclude that the rule does not distinguish between *in personam* and *in rem* or *quasi in rem* actions. To be sure, the state bar committee note advises that "[t]he additional requirement that personal service not be required by law, which found its theoretical origins in the distinction between actions in personam and actions in rem, has been eliminated." Ariz. R. Civ. P. 4.1(n) cmt.

¶ 14 Moreover, the rule specifically applies to instances when residence is unknown but the last known address is within Arizona, which is likely the circumstance in the present case. Ariz. R. Civ. P. 4.1(n). In some cases, it may be impossible for the court to determine whether the defendant is a resident or non-resident. *See, e.g., Mervyn's*, 144 Ariz. at 300 n. 4, 697 P.2d at 693. Here, MFI has a last known address for Hillman in Arizona, but has been unable to personally serve him at this address.

III. *Due Process Requirements*

4 5 6 7 ¶ 15 In addition to satisfying the requirements of Rule 4.1(n), a plaintiff seeking service by publication must also satisfy the due process minimums articulated in *Mullane*. 339 U.S. at 314–15, 70 S.Ct. 652. Specifically, publication satisfies due process minimum notice requirements if it is the best means of notice under the circumstances and it is reasonably calculated to apprise the interested parties of the pendency of the action. *See id.* at 314. Service by publication is constitutionally sufficient for a defendant who willfully leaves the state to evade service of process. *Walker*, 146 Ariz. at 444, 706 P.2d at 1211. Service by publication is also sufficient for non-resident motorists who cannot be located through due diligence. *See id.* at 445, 706 P.2d at 1212. We hold that service ***1240 *74* by publication is likewise sufficient when a plaintiff has exercised due diligence to personally serve a resident defendant at a last known address within the state and has complied with the publication procedures of Rule 4.1(n).

IV. *Public Policy Considerations; Absent Defendant's Remedies*

¶ 16 Public policy is best served by not rewarding a resident defendant who successfully evades personal service to the detriment of a plaintiff who has suffered monetary damage. We agree with the state bar committee that a plaintiff who elects service by publication risks a future constitutional challenge. *See* Ariz. R. Civ. P. 4.1(n) cmt. However, it is the role of the defendant, and not the court, to challenge service of process by publication.

¶ 17 Public policy also requires that a defendant be afforded relief from unjust judgments. Thus, even if a default judgment is entered pursuant to Rule 55 of the Arizona Rules of Civil Procedure, a defendant is not without a remedy. Rule 60(c)

provides that the court may relieve a party from a final judgment for the following reasons:

> (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(d); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

8 9 10 ¶ 18 "A party seeking relief from an entry of default or default judgment must establish that (1) the failure to answer within the time required by law was due to excusable neglect; (2) relief was promptly sought; and (3) a meritorious defense to the action existed." *Baker Int'l Assocs., Inc. v. Shanwick Int'l Corp.*, 174 Ariz. 580, 583, 851 P.2d 1379, 1382 (App.1993). A defendant's neglect or inadvertence is compared to that of a reasonably prudent person under the circumstances. *City of Phoenix v. Geyler*, 144 Ariz. 323, 331, 697 P.2d 1073, 1081 (1985). Moreover, a defendant must allege facts sufficient to demonstrate that the neglect is excusable, not merely unexplained. *Richas*, 133 Ariz. at 515, 652 P.2d at 1038.

11 12 13 ¶ 19 Motions for relief from judgment must be filed within a reasonable time, and relief under reasons (1), (2), and (3) must be sought within six months of the judgment. Ariz. R. Civ. P. 60(c). However, there is no time limit in which a motion for a void judgment must be brought under Rule 60(c)(4), and the court must vacate such a judgment even in the case of unreasonable delay by the party seeking relief. *Martin v. Martin*, 182 Ariz. 11, 14, 893 P.2d 11, 14 (App.1994); *see also Int'l Glass & Mirror, Inc. v. Banco Ganadero Y Agricola, S.A.*, 25 Ariz.App. 604, 605, 545 P.2d 452, 453 (1976) ("The 'reasonable time' requirement of Rule 60(c) ... does not apply when a judgment is attacked as void."). A judgment or order is void if the court lacked jurisdiction over the subject matter, over the person, or over the particular judgment or order entered. *Martin*, 182 Ariz. at 15, 893 P.2d at 15. Moreover, a party seeking relief from a void judgment need not show that their failure to file a timely answer was excusable, that they acted promptly in seeking relief from the default judgment, or that they had a meritorious defense. *Darnell v. Denton*, 137 Ariz. 204, 206, 669 P.2d 981, 983 (App.1983).

¶ 20 Rule 60(c) also prescribes specific, separate relief for cases involving service by publication:

> This rule does not limit the power of a court to entertain an independent action to relieve a party from judgment, order or proceeding, *or to grant relief to a defendant served by publication as provided by Rule 59(j)* or to set aside a judgment for fraud upon the court.

(Emphasis added.) Rule 59(j) provides that "[w]hen judgment has been rendered on service by publication, and the defendant has not appeared, a new trial may be granted upon application of the defendant for good cause shown by affidavit, made within one year after rendition of the judgment." When service of process was by publication, a party against whom a default judgment has been ***1241 *75* entered may seek relief under Rule 59(j) within one year of the judgment. After one year has lapsed, the party may still seek relief under Rule 60(c)(4). Thus, the advantages afforded a plaintiff in Rule 4.1(n) by allowing service by publication for *in personam* actions are counter-balanced by the relief provided a defendant in Rules 59(j) and 60(c).

¶ 21 Based on the order of publication issued by the court below, we assume that MFI exercised due diligence in attempting to personally serve Hillman and satisfied the procedural requirements of Rule 4.1(n). We conclude that the court erred by *sua sponte* asserting Hillman's challenge to the validity of publication in this case. The court should

have granted MFI's motion for default judgment. Hillman may then challenge the default judgment under Rules 59(j) and 60(c) of the Arizona Rules of Civil Procedure.

CONCLUSION

¶ 22 For the foregoing reasons, we accept jurisdiction and we grant relief. We reverse the trial court's denial of MFI's motion for default judgment and remand for further proceedings consistent with this decision.

CONCURRING: G. MURRAY SNOW, Presiding Judge and JOHN C. GEMMILL, Judge.

All Citations

208 Ariz. 70, 90 P.3d 1236, 426 Ariz. Adv. Rep. 38, 427 Ariz. Adv. Rep. 36

Footnotes

1 MFI originally filed this action as a civil appeal. It was re-designated as a special action by order of this Court. *See generally* Ariz. R.P. Spec. Act. 1 (a). We note that no response brief was filed in this case. *See* Ariz. R.P. Spec. Act. 7(e). Despite this omission, we choose to publish this decision because we may never have a case that presents this issue for review in which the defendant responds.

End of Document

Rule 41. Service of Process within Arizona

(a) Territorial Limits of Effective Service. All process--including a summons--may be served anywhere within Arizona.

(b) Serving a Summons and Complaint or Other Pleading. The summons, the pleading, and other documents being served must be served together, and within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made.

(c) Waiving Service. [JWR Note: Note that the current rule does not have a provision regarding waiver of service. It is contained in Rule 40, which calls for a procedure that is a lot different from the civil rule's procedure. Also note that in the restyled rule, Rule 40(f)(1) governs this subject, and seems duplicative what is shown here.]

(1) ***Requesting a Waiver.*** An individual, corporation, or association that is subject to service under Rule 41(d), (h)(1)-(3), (h)(4)(A), or (i) has a duty to avoid unnecessary expense in serving the summons. To avoid costs, the petitioner may notify the respondent that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed to the respondent and any other person required in this rule to be served with the summons and the pleading being served;

(B) name the court where the pleading being served was filed;

(C) be accompanied by a copy of the pleading being served, two copies of a waiver form prescribed in Rule 97, Form XX [**Note:** The FLR currently does not have an equivalent to Civil Rule 84, Form 2] and a prepaid means for returning the completed form;

(D) inform the respondent, using text provided in Rule 97, Form XX [**Note:** Again, there is no equivalent FLR form] of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the respondent a reasonable time to return the waiver, which must be at least 30 days after the request was sent; and

(G) be sent by first-class mail or other reliable means.

(2) ***Failure to Waive.*** If a respondent fails without good cause to sign and return a waiver requested by a petitioner, the court must impose on the respondent:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) ***Time to Answer After a Waiver.*** A respondent who, before being served with process, timely returns a waiver need not serve a response or otherwise respond to the pleading being served until 60 days after the request was sent.

(4) ***Results of Filing a Waiver.*** When the petitioner files an executed waiver, proof of service is not required and, except for the additional time in which a respondent may answer or otherwise respond as provided in Rule 4.1(c)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.

(5) ***Jurisdiction and Venue Not Waived.*** Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(d) Serving an Individual. Unless Rule 41(c), (f), (g), or (h) applies, an individual may be served by:

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(e) Service by Mail or National Courier Service. [**Note:** Civil Rule 4.1 does not include a corresponding provision, but current Family Law Rule 41 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is outside Arizona but within the United States, the party may serve the person by mailing the summons and a copy of the pleading being served to the person at that address by any form of postage-prepaid mail, including a national courier service, that requires a signed and returned receipt.

(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located outside Arizona but within the United States;

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person by any form of mail described in Rule 42(c)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and which indicates that the person received the described documents; and

(D) the date of receipt by the person being served.

(f) Serving a Minor. Unless Rule 41(g) applies, a minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 41(d) for serving an individual and also delivering a copy of each in the same manner:

(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(g) Serving a Minor Who Has a Guardian or Conservator. If a court has appointed a guardian or conservator for a minor, the minor must be served by serving the guardian or conservator in the manner set forth in Rule 41(d) for serving an individual, and separately serving the minor in that same manner.

(h) Serving a Person Adjudicated Incompetent Who Has a Guardian or Conservator. If a court has declared a person to be insane, gravely disabled, incapacitated, or mentally incompetent to manage that person's property and has appointed a guardian or conservator for the person, the person must be served by serving the guardian or conservator in the manner set forth in Rule 41(d) for serving an individual, and separately serving the person in that same manner.

(i) Serving a Governmental Entity.

(1) ***Generally.*** If a governmental entity has the legal capacity to be sued and it has not waived service under Rule 41(c), it may be served by delivering a copy of the summons and the pleading being served to the following individuals:

(A) for service on the State of Arizona, the Attorney General or any person designated by the Attorney General; [**JWR Note:** the words following "or" were part of the 2008 amendment to the rule.]

(B) for service on a county, the Board of Supervisors clerk for that county;

(C) for service on a municipal corporation, the clerk of that municipal corporation; and

(D) for service on any other governmental entity:

(i) the individual designated by the entity, as required by statute, to receive service of process; or

(ii) if the entity has not designated a person to receive service of process, then the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(2) ***Alternative Procedure for Serving the State in a Title IV-D Case.*** **[JWR Note:** This is from a 2008 amendment.]

(A) *Generally.* If a county, by administrative order, authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona in such a case by following the procedures in this rule rather than the procedure in (a)(1).

(B) *Procedure.* A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

(C) *Clerk's Duties:* Upon receipt, the clerk must promptly file, scan (if necessary), and electronically transmit accurate copies of the documents and the Notice of State Interest to the electronic address that the State designates in response to the implementing administrative order.

(D) *Effective Date of Service.* Service is complete upon the clerk filing a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

(j) Serving a Corporation, Partnership, or Other Unincorporated Association. If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued and has not waived service under Rule 41(c), it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and--if the agent is one authorized

by statute and the statute so requires--by also mailing a copy of each to the respondent.

(k) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.

(1) ***Generally.*** If a domestic corporation does not have an officer or an agent within Arizona on whom process can be served, the corporation may be served by depositing two copies of the summons and the pleading being served with the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(2) ***Evidence.*** If the sheriff of the county in which the action is pending states in the return that, after diligent search or inquiry, the sheriff has been unable to find an officer or agent of such corporation on whom process may be served, the statement constitutes prima facie evidence that the corporation does not have such an officer or agent in Arizona.

(3) ***Commission's Responsibilities.*** The Arizona Corporation Commission must retain one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the corporation's articles of incorporation, other Corporation Commission records, or any other source.

(l) Alternative Means of Service.

(1) ***Generally.*** If a party shows that the means of service provided in Rule 41(c) through Rule 41(j) are impracticable, the court may—on motion and without notice to the person to be served—order that service may be accomplished in another manner.

(2) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. In any event, the serving party must mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements of Rule 41(l), 41(m), 42(f), or 42(g) are met and the procedures provided in those rules are followed.

(m) Service by Publication.

(1) ***Generally.*** A party may serve a person by publication only if:

(A) the last-known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has been unable to ascertain the person's current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

(2) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons and a statement describing how a copy of the pleading being served may be obtained at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

(ii) if the last-known address of the person to be served is in a different county, in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 40(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

(3) ***Mailing.*** If the serving party knows the address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

(4) ***Return.***

(A) *Required Affidavit.* The party or person making service must prepare, sign and file an affidavit stating the manner and dates of the publication and mailing, and the circumstances warranting service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.

(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

(C) *Effect.* An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication.

(n) Service by Publication on an Unknown Heir in a Real Property Action. [Note: This section is not included in current Rule 41.] An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 41(l), if:

(1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and

(2) the heir must be a party to the action to permit a complete determination of the action.

(o) Serving an Incarcerated Person. [**Note:** This section was placed at the end of the rule to allow the rule to conform to the organization of Civil Rule 4.1.] **[JWR Note:** If you delete (c) (waiver of service), you might consider reinserting this earlier.] A person who is incarcerated in a jail or prison of the State of Arizona or a political subdivision of the State, or in another correctional facility located in Arizona, may be served in the manner provided in (c). However, if service is by mail or national courier service, the return or confirmation of service may be completed by an official of the jail, prison or correctional facility, and the signature of an official of the jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served.

COMMITTEE COMMENT

This rule is based on Rule 4.1, Arizona Rules of Civil Procedure. Rules 41(M) and 42(D) are intended to require personal service prior to the court adjudicating issues of paternity, child support, spousal maintenance, division of marital property or any other issue that does require personal jurisdiction over the parties. Taylor v. Jarrett, 191 Ariz. 550, 959 F. 2d 807 (App. 1998). Service by publication is sufficient for the court to dissolve a marriage, enter custody orders and resolve any other in rem or quasi in rem issue that does not require personal jurisdiction. This rule does not follow the holding in Master Financial, Inc. v. Woodburn, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), applicable to Rule 4.1, Arizona Rules of Civil Procedure.

Rule 41. Service ~~of Process~~ within Arizona

(a) ~~Territorial Limits of Effective Service~~ Statewide. ~~All process including a~~A summons ~~–~~may be served anywhere within Arizona.

~~(b)~~ **Serving a Summons and ~~Complaint or Other~~ Pleadings.** The summons, together with the ~~pleading, and~~ other documents being served must be served together~~, and~~ within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made. ~~**Waiving Service. [JWR Note:** Note that the current rule does not have a provision regarding waiver of service. It is contained in Rule 40, which calls for a procedure that is a lot different from the civil rule's procedure. Also note that in the restyled rule, Rule 40(f)(1) governs this subject, and seems duplicative what is shown here.]~~

~~(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 41(d), (h)(1)-(3), (h)(4)(A), or (i) has a duty to avoid unnecessary expense in serving the summons. To avoid costs, the petitioner may notify the respondent that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:~~

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~~(A) be in writing and be addressed to the respondent and any other person required in this rule to be served with the summons and the pleading being served;~~

~~(B) name the court where the pleading being served was filed;~~

~~(C) be accompanied by a copy of the pleading being served, two copies of a waiver form prescribed in Rule 97, Form XX [Note: The FLR currently does not have an equivalent to Civil Rule 84, Form 2] and a prepaid means for returning the completed form;~~

~~(D) inform the respondent, using text provided in Rule 97, Form XX [Note: Again, there is no equivalent FLR form] of the consequences of waiving and not waiving service;~~

~~(E) state the date when the request is sent;~~

~~(F) give the respondent a reasonable time to return the waiver, which must be at least 30 days after the request was sent; and~~

~~(G) be sent by first-class mail or other reliable means.~~

~~(2) *Failure to Waive.* If a respondent fails without good cause to sign and return a waiver requested by a petitioner, the court must impose on the respondent:~~

~~(A) the expenses later incurred in making service; and~~

~~(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.~~

~~(3) *Time to Answer After a Waiver.* A respondent who, before being served with process, timely returns a waiver need not serve a response or otherwise respond to the pleading being served until 60 days after the request was sent.~~

~~(4) *Results of Filing a Waiver.* When the petitioner files an executed waiver, proof of service is not required and, except for the additional time in which a respondent may answer or otherwise respond as provided in Rule 4.1(e)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.~~

(b) ~~*Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or ven~~

~~(5)~~

(c) Serving an Individual. Unless Rule ~~41(e),~~ 41(f), or (g)~~, or (h)~~ applies, an individual may be served by: ~~[**WG note:** Cheri will s/w Maricopa commissioner re Sevicemembers Civil Relief Act]~~

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service~~ of process.~~

(d) Service by Mail or National Courier Service. [**Note:** Civil Rule 4.1 does not include a corresponding provision, but current Family Law Rule 41 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is within ~~outside~~ Arizona ~~but within the United States~~, the party may serve the person by mailing the summons and a copy of the pleading being served to the person at that address by any form of postage-prepaid mail, including a national courier service, ~~that~~ which requests restricted delivery to the party~~respondent~~ and requires a ~~signed and returned~~ receipt signed by the addressee.

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(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located inside ~~outside~~ Arizona, ~~but within the United States;~~

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as ~~by any form of mail~~ described in Rule 4241(~~e~~d)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and ~~which~~ that confirms ~~indicates that~~ the designated person received the described documents; and

(D) the date of receipt by the person being served.

(e) Serving a Minor. ~~Unless Rule 41(g) applies, a~~ A minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 41(~~d~~c) for serving an individual ~~and also~~and delivering a copy of each in the same manner:

(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

~~**(f) Serving a Minor Who Has a Guardian or Conservator.** If a court has appointed a guardian or conservator for a minor, the minor must be served by serving the guardian or conservator in the manner set forth in Rule 41(d) for serving an individual, and separately serving the minor in that same manner.~~

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~~(g)~~(f) **Serving a Person ~~Adjudicated Incompetent~~ Who Has a Court-Appointed Guardian or Conservator.** If a ~~court has declared a~~ person has a court-appointed guardian or conservator, ~~to be insane, gravely disabled, incapacitated, or mentally incompetent to manage that person's property and has appointed a guardian or conservator for the person, the person~~ the guardian or conservator must also be served ~~by serving the guardian or conservator in the manner~~ as required by ~~set forth in~~ Rule 41(~~d~~c) for serving an individual, ~~and~~ separately from serving the person. ~~in that same manner.~~

~~(h)~~(g) **Serving a Governmental Entity.**

(1) ***Generally.*** ~~If a~~ A governmental entity having~~s~~ the legal capacity to be sued ~~and it has not waived service under Rule 41(c), it~~ may be served by delivering a copy of the summons and the pleading: ~~being served to: the following individuals:~~

(A) for service on the State of Arizona, to the Attorney General or any person designated by the Attorney General; [**JWR Note:** the words following "or" were part of the 2008 amendment to the rule.]

(B) for service on a county, to the Board of Supervisors clerk for that county;

(C) for service on a municipal corporation, to the clerk of that municipal corporation; ~~and,~~

(D) for service on any other governmental entity:

(i) to the individual designated by the entity, as required by statute, to receive service of process; or

(ii) if the entity has not designated a person to receive service of process, then to the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(2) ***Alternative Procedure for Serving the State in a Title IV-D Case.*** **[JWR Note:** This is from a 2008 amendment.] ~~[WG note: Does this subpart belong in a rule concerning the summons? Ask Janet to weigh in.]~~

(A) *Generally.* If a county ~~, by administrative order,~~ authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona ~~in such a case~~ by the following the procedure~~s~~: ~~in this rule rather than the procedure in (a)(1).~~

~~(B)~~ (B) *Procedure.* ~~-~~A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

~~(C)~~ (C) *Clerk's Duties:* ~~Upon~~On receipt, the clerk must promptly file, scan (if necessary), and electronically transmit ~~accurate~~ copies of the documents and the Notice of State Interest to the ~~electronic address that the~~ State designate~~d~~s electronic address. ~~in response to the implementing administrative order.~~

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~~(D)~~ (D) *Effective Date of Service.* Service is complete when ~~upon~~ the clerk files~~ing~~ a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

~~(i)~~(h) **Serving a Corporation, Partnership, or Other Unincorporated Association.** If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued ~~and has not waived service under Rule 41(c),~~ it may be served by delivering a copy of the summons and the pleading ~~being served~~ to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service ~~of process,~~ and ~~—~~if ~~the agent is one authorized by statute and the~~ required by statute, ~~so requires —~~by also mailing a copy ~~of each~~ to the party ~~respondent~~.

~~(j)~~(i) **Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.**

~~(1) *Generally.* If a domestic corporation does not have an officer or an agent within Arizona on whom a summons process can be served, the corporation may be served by delivering depositing two copies of the summons and the pleading being served with the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.~~

(1) ~~*Evidence*~~*Diligent Search*. If after diligent search and inquiry, the sheriff of the county in which the action is pending states in the return ~~that, after diligent search or inquiry, the sheriff has been~~ an inability ~~unable~~ to find an officer or agent of the ~~such~~ corporation to ~~on whom process may~~ be served, the sheriff's statement is ~~constitutes prima facie~~ rebuttable evidence that the corporation does not have ~~such~~ an officer or agent in Arizona.

(2) ***Corporation Commission.*** If a domestic corporation does not have an officer or an agent within Arizona on whom a summons can be served, the corporation may be served by delivering two copies of the summons and the pleading being served to the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

~~(2)~~

(3) ***Commission's Responsibilities.*** The Arizona Corporation Commission will ~~must retain~~ keep one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from ~~from the corporation's articles of incorporation, other~~ the Corporation Commission records, or ~~any~~an other source.

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~~(k)~~(j) **Alternative Means of Service.**

(1) ***Generally.*** If a party shows ~~that~~ the ~~means of~~ service provided in Rule 41(c) through Rule 41(~~i~~j) is ~~are~~ impracticable, the court may—on motion and without notice to the person to be served—order that service may be accomplished in another manner.

(2) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. ~~In any event, t~~The serving party must also mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements and procedure of ~~Rule 41~~Rule 41 (~~k~~) ~~41(l), 41(m), 42(f), or 42(g)~~ are met. ~~and the procedures provided in those rules are followed.~~ [**Workgroup note:** Dean will inquire whether the Task Force believes this provision is necessary. Cross-reference Civil Rule 4.1(k).]

~~(l)~~(k) **Service by Publication.**

(1) ***Generally.*** ~~A party may serve a person~~ Service by publication is permitted ~~only~~ if:

(A) the last-known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has been unable to ~~ascertain~~ determine the person's current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

~~(2) *Jurisdiction:* Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.~~

~~**NOTE: After the August 25 meeting materials were circulated to Task Force members, Commissioner Christoffel proposed the following changes to (k)(2):**~~

(2) ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance,

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division of marital property not located in Arizona, or any other issue requiring personal jurisdiction over a party. Service by publication is sufficient to confer jurisdiction on the court in actions ~~involving~~ requesting dissolution of marriage, legal separation, annulment, legal decision-making and parenting time, third party placement and legal decision-making, third party visitation, in loco parentis visitation, division of marital property located in Arizona, ~~(alternative: third party rights under A.R.S. § 25-409)~~ or ~~any~~ other issues not requiring personal jurisdiction over a party.

~~**(B)**~~

~~**(2)**~~**(3)** ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons, and a statement describing how a copy of the pleading being served may be obtained, at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

(ii) if the last-known address of the person to be served is in a different county, also in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 40(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

~~**(3)**~~**(4)** ***Mailing.*** If the serving party knows the [**Note:** Add "last"?] address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

~~**(4)**~~**(5)** ***Return.***

(A) *Required Affidavit.* The party or person making service must ~~prepare, sign and~~ file an affidavit stating the manner and dates of the publication and mailing, and the circumstances requiring ~~warranting~~ service by publication. The affidavit must also state ~~I~~if no mailing was made because ~~the serving~~ of lack of knowledge ~~party did not know~~ of the current address of the person being served. ~~, the affidavit must state that fact.~~

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(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

~~(C)~~ *Effect.* A~~n~~ properly completed affidavit ~~that complies with these requirements constitutes prima facie~~ will be rebuttable evidence of compliance with the requirements for service by publication.

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~~**(m) Service by Publication on an Unknown Heir in a Real Property Action.** [Note: This section is not included in current Rule 41.] An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 41(l), if:~~

~~**(1)** the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and~~

~~**(2)** the heir must be a party to the action to permit a complete determination of the action.~~

~~(n)~~(l) **Serving an Incarcerated Person.** [**Note:** This section was placed at the end of the rule to allow the rule to conform to the organization of Civil Rule 4.1.] **[JWR Note:** If you delete (c) (waiver of service), you might consider reinserting this earlier.] A person who is incarcerated in a jail or prison ~~of~~ within the State of Arizona ~~or a political subdivision of the State, or in another correctional facility located in Arizona,~~ may be served ~~in the manner provided in (c). However, if service is~~ by mail or national courier service ~~,~~with the return or confirmation of service ~~may be~~ completed by an official of the jail, prison or correctional facility, and the signature of an official of the jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature.

~~**COMMITTEE COMMENT**~~

~~This rule is based on Rule 4.1, Arizona Rules of Civil Procedure. Rules 41(M) and 42(D) are intended to require personal service prior to the court adjudicating issues of paternity, child support, spousal maintenance, division of marital property or any other issue that does require personal jurisdiction over the parties. Taylor v. Jarrett, 191 Ariz. 550, 959 F. 2d 807 (App. 1998). Service by publication is sufficient for the court to dissolve a marriage, enter custody orders and resolve any other in rem or quasi in rem issue that does not require personal jurisdiction. This rule does not follow the holding in Master Financial, Inc. v. Woodburn, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), applicable to Rule 4.1, Arizona Rules of Civil Procedure.~~

Rule 41. Service within Arizona

(a) Statewide. A summons may be served anywhere within Arizona.

(b) Serving a Summons and Pleadings. The summons, together with the other documents being served must be served together within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made.

(c) Serving an Individual. Unless Rule 41(f), or (g) applies, an individual may be served by:

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service.

(d) Service by Mail or National Courier Service. [**Note:** Civil Rule 4.1 does not include a corresponding provision, but current Family Law Rule 41 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is within Arizona, the party may serve the person by mailing the summons and a copy of the pleading being served to the person at that address by any form of postage-prepaid mail, including a national courier service, which requests restricted delivery to the party and requires a receipt signed by the addressee.

(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located inside Arizona,

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as described in Rule 41(d)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and that confirms the designated person received the described documents; and

(D) the date of receipt by the person being served.

(e) Serving a Minor. A minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 41(c) for serving an individual and delivering a copy of each in the same manner:

(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(f) Serving a Person Who Has a Court-Appointed Guardian or Conservator. If a person has a court-appointed guardian or conservator, the guardian or conservator must also be served as required by Rule 41(c) for serving an individual, separately from serving the person.

(g) Serving a Governmental Entity.

(1) ***Generally.*** A governmental entity having the legal capacity to be sued may be served by delivering a copy of the summons and the pleading:

(A) for service on the State of Arizona, to the Attorney General or any person designated by the Attorney General; [**JWR Note:** the words following "or" were part of the 2008 amendment to the rule.]

(B) for service on a county, to the Board of Supervisors clerk for that county;

(C) for service on a municipal corporation, to the clerk of that municipal corporation;

(D) for service on any other governmental entity:

(i) to the individual designated by the entity, as required by statute, to receive service of process; or

(ii) if the entity has not designated a person to receive service of process, then to the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(2) ***Alternative Procedure for Serving the State in a Title IV-D Case.*** **[JWR Note:** This is from a 2008 amendment.~~]~~~~[**WG note:** Does this subpart belong in a rule concerning the summons? Ask Janet to weigh in.]~~

(A) *Generally.* If a county authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona by the following the procedure.

(B) *Procedure.* A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

(C) *Clerk's Duties:* On receipt, the clerk must promptly file, scan (if necessary), and electronically transmit copies of the documents and the Notice of State Interest to the State designated electronic address.

(D) *Effective Date of Service.* Service is complete when the clerk files a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

(h) Serving a Corporation, Partnership, or Other Unincorporated Association. If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued it may be served by delivering a copy of the summons and the pleading to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service, and if required by statute, by also mailing a copy to the party .

(i) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.

(1) ***Diligent Search.*** If after diligent search and inquiry, the sheriff of the county in which the action is pending states in the return an inability to find an officer or agent of the corporation to be served, the sheriff's statement is rebuttable evidence that the corporation does not have an officer or agent in Arizona.

(2) ***Corporation Commission.*** If a domestic corporation does not have an officer or an agent within Arizona on whom a summons can be served, the corporation may be served by delivering two copies of the summons and the pleading being served to the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

~~(4)~~(3) ***Commission's Responsibilities.*** The Arizona Corporation Commission will keep one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the Corporation Commission records, or another source.

(j) Alternative Means of Service.

(1) ***Generally.*** If a party shows the service provided in Rule 41(c) through Rule 41(i) is impracticable, the court may—on motion and without notice to the person to be served—order that service may be accomplished in another manner.

(2) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. The serving party must also mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements and procedure of Rule 41 (k) are met. [**Workgroup note:** Dean will inquire whether the Task Force believes this provision is necessary. Cross-reference Civil Rule 4.1(k).]

(k) Service by Publication.

(1) ***Generally.*** Service by publication is permitted if:

(A) the last-known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has been unable to determine the person's current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

~~**(2)** ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.~~

~~**NOTE: After the August 25 meeting materials were circulated to Task Force members, Commissioner Christoffel proposed the following changes to (k)(2):**~~

(2) ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property not located in Arizona, or any other issue requiring personal jurisdiction over a party. Service by publication is sufficient to confer jurisdiction on the court in actions ~~involving~~ requesting dissolution of marriage, legal separation, annulment, legal decision-making and parenting time, third party placement and legal decision-making, third party visitation, in loco parentis visitation, division of marital property located in Arizona, ~~(alternative: third party rights under A.R.S. § 25-409)~~ or ~~any~~ other issues not requiring personal jurisdiction over a party.

(3) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons, and a statement describing how a copy of the pleading being served may be obtained, at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

(ii) if the last-known address of the person to be served is in a different county, also in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 40(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

(4) ***Mailing.*** If the serving party knows the [**Note:** Add "last"?] address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

(5) ***Return.***

(A) *Required Affidavit.* The party or person making service must file an affidavit stating the manner and dates of the publication and mailing, and the circumstances requiring service by publication. The affidavit must also state if no mailing was made because of lack of knowledge of the current address of the person being served.

(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

Effect. A properly completed affidavit will be rebuttable evidence of compliance with the requirements for service by publication.

(l) Serving an Incarcerated Person. [**Note:** This section was placed at the end of the rule to allow the rule to conform to the organization of Civil Rule 4.1.] **[JWR Note:** If you delete (c) (waiver of service), you might consider reinserting this earlier.] A person who is incarcerated in a jail or prison within the State of Arizona may be served by mail or national courier service with the return or confirmation of service completed by an official of the jail, prison or correctional facility, and the signature of an official of the jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature.

Rule 41. Service ~~of Process within~~Within and Outside Arizona

~~**(i) Territorial Limits of Effective Service.** All process including a~~A summons ~~may be served anywhere within Arizona.~~

(a) Generally.

(1) Scope. This rule governs service of a summons, an order to appear, a pleading, and additional filings required under Rule 26 or Rule 91.

(2) Jurisdiction. An Arizona court may exercise personal jurisdiction over parties, whether found within or outside Arizona, to the maximum extent permitted by the United States and Arizona Constitutions. [42A]

(3) In State. A summons or order to appear may be served anywhere within Arizona. [41A]

(4) Out of State. A party may serve a summons or order to appear on any person located outside Arizona as provided in this rule, and proper service has the same effect as if personal service was accomplished within Arizona. [42A]

(5) Authority to Serve a Summons. Except as otherwise provided in this rule, a person who serves a summons in Arizona must be authorized to do so under Rule 40(d), and a person who serves a summons outside Arizona but within the United States must be authorized to serve process under the law of the state where service is made. [42B]

~~**(a)** **Serving a Summons and ~~Complaint or Other~~ Pleadings.** The summons, together with the ~~pleading, and~~ other documents being served, must be served together~~, and~~ within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made.~~**Waiving Service. [JWR Note:** Note that the current rule does not have a provision regarding waiver of service. It is contained in Rule 40, which calls for a procedure that is a lot different from the civil rule's procedure. Also note that in the restyled rule, Rule 40(f)(1) governs this subject, and seems duplicative what is shown here.]~~

~~**(0)** *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 41(d), (h)(1)-(3), (h)(4)(A), or (i) has a duty to avoid unnecessary expense in serving the summons. To avoid costs, the petitioner may notify the respondent that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:~~

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~~(`) be in writing and be addressed to the respondent and any other person required in this rule to be served with the summons and the pleading being served;~~

~~(0)~~

served by: ~~[**WG note:** Cheri will s/w Maricopa commissioner re Sevicemembers Civil Relief Act]~~

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service~~. of process.~~

~~(l)~~(d) **Service by Mail or National Courier Service.** [**Note:** Civil Rule 4.1 does not include a corresponding provision, but current Family Law Rule 41 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is within ~~outside~~ Arizona or another judicial district of the United States ~~but within the United States~~, the party may serve the person by mailing the summons and ~~a copy~~ copies of the pleading and other documents being served to the person at that address by any form of postage-prepaid mail, including a national courier service, ~~that~~ which requests restricted delivery to the ~~party~~person~~respondent~~ and requires a ~~signed and returned~~ receipt signed by the addressee.

(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located [inside ~~outside~~ Arizona] or [outside Arizona but within a judicial district of the United States]~~, but within the United States;~~

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as ~~by any form of mail~~ described in Rule ~~42~~41(~~e~~d)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and ~~which~~ that confirms ~~indicates~~ ~~that~~ the designated person received the described documents; and

(D) the date of receipt by the person being served.

~~(D)~~ **(3)** ***Incarcerated Person.*** If the person being served is incarcerated, the affidavit must also include a statement that the serving party sent a copy of the documents to the person by first class mail.

(m)(e) **Serving a Minor.** Unless Rule 41(g) applies, a A minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 41(dc) for serving an individual and alsoand delivering a copy of each in the same manner:

(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(n) [illegible]

[illegible] must also be served by serving the guardian or conservator in the manner required by set forth in Rule 41(dc) for serving an individual, and separately from serving the person.

(g) Serving an Incarcerated Person. A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States may be served by mail or national courier service as provided by Rule 41(d), with the return or confirmation of service completed by an official of the jail, prison or correctional facility. The signature of an official of the jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. [41G, 42D] In addition, the petitioner must send copies of the documents being served to the inmate by first class mail.

(h) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed under Rule 42(d)—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as set forth by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the pleading being served to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(D) by other means not prohibited by international agreement, as the court orders. [42G]

(3) A minor or incompetent person in a foreign country may be served as provided by (h)(2)(A) or (B), or as the court directs. [42H]

~~**(e)** in that same manner.~~

(1) ***Generally.*** ~~If a~~ A governmental entity having the legal capacity to be sued and has not waived service under Rule 41(c), it may be served by delivering a copy of the summons and the pleading ~~being served to the following individuals:~~

(A) for service on the State of Arizona, to the Attorney General or any person designated by the Attorney General; [**JWR Note:** the words following "or" were part of the 2008 amendment to the rule.]

(B) for service on a county, to the Board of Supervisors clerk for that county;

(C) for service on a municipal corporation, to the clerk of that municipal corporation; ~~and,~~

(D) for service on any other governmental entity:

(i) to the individual designated by the entity, as required by statute, to receive service of process; or

(ii) if the entity has not designated a person to receive service of process, then to the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(2) ***Alternative Procedure for Serving the State in a Title IV-D Case.*** **[JWR Note:** This is from a 2008 amendment.~~]~~ ~~[**WG note:** Does this subpart belong in a rule concerning the summons? Ask Janet to weigh in.]~~

(A) *Generally.* If a county ~~, by administrative order,~~ authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona ~~in such a case~~ by the following the procedures ~~:~~ . ~~in this rule rather than the procedure in (a)(1).~~

(B) (B) *Procedure.* -A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

(C) (C) *Clerk's Duties:* UponOn receipt, the clerk must promptly file, scan (if necessary), and electronically transmit accurate copies of the documents and the Notice of State Interest to the electronic address that the State designated's electronic address. in response to the implementing administrative order.

(D) (D) *Effective Date of Service.* Service is complete when upon the clerk filesing a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

(q)(i) **Serving a Corporation, Partnership, or Other Unincorporated Association.** If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued and has not waived service under Rule 41(c), it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process, and --if the agent is one authorized by statute and the required by statute, so requires --by also mailing a copy of each to the party respondent.

(r)(j) **Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.**

(1) [illegible] which the action is pending states in the return that, after diligent search or inquiry, the sheriff has been an inability unable to find an officer or agent of the such corporation to on whom process may be served, the sheriff's statement is constitutes prima facie rebuttable evidence that the corporation does not have such an officer or agent in Arizona.

(2) ***Corporation Commission.*** If a domestic corporation does not have an officer or an agent within Arizona on whom a summons can be served, the corporation may be served by delivering two copies of the summons and the pleading being served to the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(2)

(3)(1) ***Commission's Responsibilities.*** The Arizona Corporation Commission will must retain keep one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from from the corporation's articles of incorporation, other the Corporation Commission records, or any an other source.

(s)(j) Alternative Means of Service.

(1) ***Generally.*** If a party shows that the means of service provided in Rule 41(c) through Rule 41(ji) is are impracticable, the court may—on motion and without notice to the person to be served—order that service may be accomplished in another manner.

(2)(1) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. In any event, tThe serving party must also mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3)(1) ***Service by Publication.*** A party may serve by publication only if the requirements and procedure of Rule 4 Rule 41(k) 41(l) 41(m) 42(f) or 42(g) are met and the procedures provided in those rules are followed [Workgroup note: Dan will inquire whether the Task Force believes this provision is necessary. Cross-reference Civil Rule 4.1(k).]

(t)(j) Service by Publication.

(1) ***Generally.*** A party may serve a person Service by publication is permitted only if:

(A) the last-known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has been unable to ascertain determine the person's current address; or

(ii)(i) the person to be served has intentionally avoided service of process; and

(A) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

~~**(2)** ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.~~

~~**NOTE: After the August 25 meeting materials were circulated to Task Force members, Commissioner Christoffel proposed the following changes to (lc)(2):**~~

(2) ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property not located in Arizona, or any other issue requiring personal jurisdiction over a party. Service by publication is sufficient to confer jurisdiction on the court in actions ~~involving~~ requesting dissolution of marriage, legal separation, annulment, legal decision-making and parenting time, third party placement and legal decision-making, third party visitation, in loco parentis visitation, division of marital property located in Arizona, ~~(alternative: third party rights under A.R.S. § 25-409)~~ or ~~any~~ other issues not requiring personal jurisdiction over a party.

~~( )~~

(A) *Generally.* Service by publication is accomplished by publishing the summons, and a statement describing how a copy of the pleading being served may be obtained, at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

~~**(ii)**~~**(i)** if the last-known address of the person to be served is in a different county, also in a newspaper in that county.

~~**(B)**~~**(A)** *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 40(d).

~~**(C)**~~**(A)** *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

~~**(D)**~~**(A)** *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

~~**(4)**~~**(1)** ***Mailing.*** If the serving party knows the [**Note:** Add "last"?] address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

~~**(5)**~~**(1)** ***Return.***

(A) *Required Affidavit.* The party or person making service must ~~prepare, sign and~~ file an affidavit stating the manner and dates of the publication and mailing, and the

circumstances requiring ~~warranting~~ service by publication. The affidavit must also state ~~I~~if no mailing was made because ~~the serving of~~ lack of knowledge ~~party did not know~~ of the current address of the person being served.~~, the affidavit must state that fact.~~

~~(B)~~(A) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

~~( )~~ *Effect.* A ~~properly completed~~ affidavit ~~that complies with these requirements constitutes prima facie~~ will be ~~admissible~~ evidence of compliance with the requirements for service by publication.

~~(u)~~(j) [illegible] Rule 41 may be made as provided in Civil Rule 4.1 or 4.2. [new]

~~COMMITTEE COMMENT~~

Former Rules 41 and 42 imposed limitations on the court's personal jurisdiction over a party when the party was served by publication. Revised Rule 41 deletes those limitations, and this rule now follows the holding in *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), paragraphs 15-22. Nevertheless, service by publication is subject to subsequent challenge if it does not satisfy due process standards of being reasonably calculated to give notice to the party being served and providing the best practicable notice under the circumstances. See Rules 83(g) and 85(c)(3)

Rule 41. Service Within and Outside Arizona

(a) Generally.

(1) Scope. This rule governs service of a summons, an order to appear, a pleading, and additional filings required under Rule 26 or Rule 91.

(2) Jurisdiction. An Arizona court may exercise personal jurisdiction over parties, whether found within or outside Arizona, to the maximum extent permitted by the United States and Arizona Constitutions. [42A]

(3) In State. A summons or order to appear may be served anywhere within Arizona. [41A]

(4) Out of State. A party may serve a summons or order to appear on any person located outside Arizona as provided in this rule, and proper service has the same effect as if personal service was accomplished within Arizona. [42A]

(5) Authority to Serve a Summons. Except as otherwise provided in this rule, a person who serves a summons in Arizona must be authorized to do so under Rule 40(d), and a person who serves a summons outside Arizona but within the United States must be authorized to serve process under the law of the state where service is made. [42B]

(b) Serving a Summons and Pleadings. The summons, together with the other documents being served, must be served together within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made.

(c) Serving an Individual. Unless Rule 41(e), or (f) applies, an individual may be served by:

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service.

(d) Service by Mail or National Courier Service. [**Note:** Civil Rule 4.1 does not include a corresponding provision, but current Family Law Rule 41 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is within Arizona or another judicial district of the United States, the party may serve the person by mailing the summons and copies of the pleading and other documents being served to the person at that address by any form of postage-prepaid mail, including a national courier service, which requests restricted delivery to the person and requires a receipt signed by the addressee.

(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located [inside Arizona] or [outside Arizona but within a judicial district of the United States],

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as described in Rule 41(d)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and that confirms the designated person received the described documents; and

(D) the date of receipt by the person being served.

(3) ***Incarcerated Person.*** If the person being served is incarcerated, the affidavit must also include a statement that the serving party sent a copy of the documents to the person by first class mail.

(e) Serving a Minor. A minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 41(c) for serving an individual and delivering a copy of each in the same manner:

(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(f) Serving a Person Who Has a Court-Appointed Guardian or Conservator. If a person has a court-appointed guardian or conservator, the guardian or conservator must also be served as required by Rule 41(c) for serving an individual, separately from serving the person.

(g) Serving an Incarcerated Person. A person who is incarcerated in a jail or prison within Arizona or outside Arizona but within a judicial district of the United States

may be served by mail or national courier service as provided by Rule 41(d), with the return or confirmation of service completed by an official of the jail, prison or correctional facility. The signature of an official of the jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature. [41G, 42D] In addition, the petitioner must send copies of the documents being served to the inmate by first class mail.

(h) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual ~~— other than a minor, an incompetent person, or a person whose waiver has been filed under Rule 42(d) —~~ may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as set forth by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the pleading being served to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(D) by other means not prohibited by international agreement, as the court orders. [42G]

(3) A minor or incompetent person in a foreign country may be served as provided by (h)(2)(A) or (B), or as the court directs. [42H]

(i) Serving a Governmental Entity.

(1) ***Generally.*** A governmental entity having the legal capacity to be sued may be served by delivering a copy of the summons and the pleading:

(A) for service on the State of Arizona, to the Attorney General or any person designated by the Attorney General; [**JWR Note:** the words following "or" were part of the 2008 amendment to the rule.]

(B) for service on a county, to the Board of Supervisors clerk for that county;

(C) for service on a municipal corporation, to the clerk of that municipal corporation;

(D) for service on any other governmental entity:

(i) to the individual designated by the entity, as required by statute, to receive service of process; or

(ii) if the entity has not designated a person to receive service of process, then to the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(2) ***Alternative Procedure for Serving the State in a Title IV-D Case.*** **[JWR Note:** This is from a 2008 amendment.~~]~~~~[**WG note:** Does this subpart belong in a rule concerning the summons? Ask Janet to weigh in.]~~

(A) *Generally.* If a county authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona by the following the procedure.

(B) *Procedure.* A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

(C) *Clerk's Duties:* On receipt, the clerk must promptly file, scan (if necessary), and electronically transmit copies of the documents and the Notice of State Interest to the State designated electronic address.

(D) *Effective Date of Service.* Service is complete when the clerk files a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

(j) Serving a Corporation, Partnership, or Other Unincorporated Association. If a domestic or foreign corporation, partnership, or other unincorporated association

has the legal capacity to be sued it may be served by delivering a copy of the summons and the pleading to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service, and if required by statute, by also mailing a copy to the party .

(k) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.

(1) ***Diligent Search.*** If after diligent search and inquiry, the sheriff of the county in which the action is pending states in the return an inability to find an officer or agent of the corporation to be served, the sheriff's statement is rebuttable evidence that the corporation does not have an officer or agent in Arizona.

(2) ***Corporation Commission.*** If a domestic corporation does not have an officer or an agent within Arizona on whom a summons can be served, the corporation may be served by delivering two copies of the summons and the pleading being served to the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(3) ***Commission's Responsibilities.*** The Arizona Corporation Commission will keep one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the Corporation Commission records, or another source.

(l) Alternative Means of Service.

(1) ***Generally.*** If a party shows the service provided in Rule 41(c) through Rule 41(i) is impracticable, the court may—on motion and without notice to the person to be served—order that service may be accomplished in another manner.

(2) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. The serving party must also mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements and procedure of Rule 41 (k) are met. [**Workgroup note:** Dean will inquire whether the Task Force believes this provision is necessary. Cross-reference Civil Rule 4.1(k).]

(m) Service by Publication.

(1) ***Generally.*** Service by publication is permitted if:

(A) the last-known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has been unable to determine the person's current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

~~**(2)** ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.~~

~~**NOTE: After the August 25 meeting materials were circulated to Task Force members, Commissioner Christoffel proposed the following changes to (k)(2):**~~

(2) ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property not located in Arizona, or any other issue requiring personal jurisdiction over a party. Service by publication is sufficient to confer jurisdiction on the court in actions ~~involving~~ requesting dissolution of marriage, legal separation, annulment, legal decision-making and parenting time, third party placement and legal decision-making, third party visitation, in loco parentis visitation, division of marital property located in Arizona, ~~(alternative: third party rights under A.R.S. § 25-409)~~ or ~~any~~ other issues not requiring personal jurisdiction over a party.

(3) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons, and a statement describing how a copy of the pleading being served may be obtained, at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

(ii) if the last-known address of the person to be served is in a different county, also in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 40(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

(4) ***Mailing.*** If the serving party knows the [**Note:** Add "last"?] address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

(5) ***Return.***

(A) *Required Affidavit.* The party or person making service must file an affidavit stating the manner and dates of the publication and mailing, and the circumstances requiring service by publication. The affidavit must also state if no mailing was made because of lack of knowledge of the current address of the person being served.

(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

Effect. A properly completed affidavit will be rebuttable evidence of compliance with the requirements for service by publication.

(n) Service in Other Circumstances. Service on a person or entity not described in Rule 41 may be made as provided in Civil Rule 4.1 or 4.2. [new]

COMMENT TO THE 2019 AMENDMENT

Former Rules 41 and 42 imposed limitations on the court's personal jurisdiction over a party when the party was served by publication. Revised Rule 41 deletes those limitations, and this rule now follows the holding in *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), paragraphs 15-22. Nevertheless, service by publication is subject to subsequent challenge if it does not satisfy due process standards of being reasonably calculated to give notice to the party being served and providing the best practicable notice under the circumstances. See Rules 83(g) and 85(c)(3)

Rule 42. Service of Process Outside Arizona

(a) Extraterritorial Jurisdiction; Personal Service Outside Arizona. An Arizona state court may exercise personal jurisdiction over a person, whether found within or outside Arizona, to the maximum extent permitted by the Arizona Constitution and the United States Constitution. A party may serve any person located outside Arizona as provided in this rule, and, when service is made, it has the same effect as if personal service were accomplished within Arizona.

(b) Direct Service 88888888888888888 look at 1 as to the 41 c through yyy.

(1) ***Generally.*** A party may serve process documents outside Arizona, but within the United States, in the same manner as provided in Rules 41(d) (c)through (i)(m).

(2) ***Who May Serve.*** Service must be made by a person who is authorized to serve process under the law of the state where service is made.

(3) ***Effective Date of Service.*** Service is complete when made, and the time period under Rule 42(m) (m) starts to run on that date.

(c) Service by Mail or National Courier Service. [**Note:** Civil Rule 4.2 does not include a specific reference to "national courier service" but current Family Law Rule 42 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is outside Arizona but within the United States, the party may serve the person by mailing the summons and a copy of the pleading being served to the person at that address by any form of postage-prepaid mail, including a national courier service, that request restricted delivery to the respondent and requires a signed and returned receipt signed by the addressee.

(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located outside Arizona but within the United States;

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as by any form of mail described in Rule 42(c)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and which that confirms indicates that the designated person received the described documents; and

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~~**(D)** the date of receipt by the person being served.~~

~~**(d) Waiver of Service.** [**Note:** This provision is not in current Rule 42.]~~

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~~**(1)** ***Requesting a Waiver.*** An individual, corporation, or association that is subject to service under Rule 42(b), (c), (h), (i), or (k) has a duty to avoid unnecessary expense in serving the summons. The petitioner may notify the defendant that an action has been commenced and request that the respondent waive service of a summons. The notice and request must:~~

~~**(A)** be in writing and be addressed to the respondent in accordance with Rule 42(b), (c), (h), (i), or (k), as applicable;~~

~~**(B)** name the court where the pleading being served was filed;~~

~~**(C)** be accompanied by a copy of the pleading being served, two copies of a waiver form set forth in Rule 97, Form XX, and a prepaid means for returning the completed form; [Note: Rule 97 does not current include this form]~~

~~**(D)** inform the respondent, using the text provided in Rule 97, Form XX, of the consequences of waiving and not waiving service;~~

~~**(E)** state the date when the request is sent;~~

~~**(F)** give the respondent a reasonable time to return the waiver, which must be at least 30 days after the request was sent, or 60 days after it was sent if it was sent outside any judicial district of the United States; and~~

~~**(G)** be sent by first-class mail or other reliable means.~~

~~**(2)** ***Failure to Waive.*** If a respondent located within the United States fails without good cause to sign and return a waiver requested by a petitioner located within the United States, the court must impose on the respondent:~~

~~**(A)** the expenses later incurred in making service; and~~

~~**(B)** the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.~~

~~**(3)** ***Time to Answer After a Waiver.*** A respondent who, before being served with process, timely returns a waiver need not serve an answer or otherwise respond to the pleading being served until 60 days after the request was sent, or 90 days after it was sent if it was sent outside any judicial district of the United States.~~

~~**(4)** ***Results of Filing a Waiver.*** When the petitioner files an executed waiver, proof of service is not required and, except for the additional time in which a respondent may answer or otherwise respond as provided in Rule 4.2(d)(3),~~

these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.

(5) *Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(c) Service on a Nonresident Under the Nonresident Motorist Act. [**Note:** This provision is not in current Rule 42.]

(1) *Generally.* In an action involving the operation of a motor vehicle in Arizona, a party may serve a nonresident—including a minor, insane, or incompetent person—as provided in A.R.S. § 28-2327.

(2) *Effective Date of Service.* If service is made under A.R.S. § 28-2327, service is complete 30 days after:

(A) the filing of the defendant's return receipt and the serving party's affidavit of compliance, as provided in A.R.S. § 28-2327(A)(1); or

(B) the filing of the officer's return of personal service, as provided in A.R.S. § 28-2327(A)(2).

(3) *Effect.* Within 30 days after completion of service, the defendant must answer in the same manner as if the defendant had been personally served with a summons in the county in which the action is pending.

(f) Service by Publication.

(1) *When Service by Publication May Not Be Used.* Service by publication is not sufficient to confer jurisdiction on a court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.

(2) *When Service by Publication May Be Used.* A party may serve a person by Service by publication is permitted only if:

(A) the action involves dissolution of a marriage, legal separation, annulment custody legal decision-making, parenting time, or any other issue not requiring jurisdiction over the party;

(B) the last-known address of the person to be served is outside Arizona but:

(i) the serving party, despite reasonably diligent efforts, has not been able to ascertain determine the person's current address; or

(ii) the person has intentionally avoided service of process; and

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~~(C) service by publication is the best means practicable in the circumstances for providing notice to the person of the action's commencement.~~

~~(3) *Procedure.*~~

~~*Generally.* Service by publication is accomplished by publishing the summons and a statement describing how a copy of the pleading being served may be obtained at least once a week for 4 successive weeks:~~

~~(i) in a newspaper published in the county where the action is pending;and~~

~~9ii). if no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.~~

~~(A)~~

~~(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone else authorized to serve process under Rule 40(d).~~

~~(C) Alternative Newspapers. If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.~~

~~(D) *(c) Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.~~

~~(4) *Mailing.* If the serving party knows the address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.~~

~~(5) *Return.*~~

~~(A) *Required Affidavit.* The party or person making service must prepare, sign and file an affidavit describing the manner and dates of the publication and mailing, and the circumstances warranting service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.~~

~~(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.~~

~~(C) *Effect.* An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication.~~

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(g) Service by Publication on an Unknown Heir in a Real Property Action. [Note: This provision is not in current Rule 42 and there doesn't appear to be a need for it.] An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 4.2(f), if:

(1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and

(2) the heir must be a party to the action to permit a complete determination of the action.

(h) Serving a Corporation, Partnership or Other Unincorporated Association Located Outside Arizona but Within the United States. If a corporation, partnership, or other unincorporated association is located outside Arizona but within the United States, it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of each to the defendant.

(i) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed under Rule 42(d) — may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as set forth by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the pleading being served to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(D) by other means not prohibited by international agreement, as the court orders.

(j) **Serving a Minor or Incompetent Person in a Foreign Country.** A party may serve a minor, a minor with a guardian or conservator, or an incompetent person who is located in a place not within any judicial district of the United States in the manner set forth in Rule 42(i)(2)(A) or (B) or by such means as the court may otherwise order.

(k) **Serving a Corporation, Partnership, or Other Incorporated Association in a Foreign Country.** Unless federal law provides otherwise or the defendant's waiver has been filed under Rule 42(d), a corporation, partnership, or other unincorporated association that has the legal capacity to be sued may be served at a place not within any judicial district of the United States by delivering a copy of the summons and pleading being served in the manner set forth in Rule 42(i) for serving an individual, except personal delivery under Rule 42(i)(2)(C)(i).

(l) **Serving a Foreign State.** A foreign state or one of its political subdivisions, agencies, or instrumentalities must be served in accordance with 28 U.S.C. § 1608.

Time to Serve an Answer After Service Outside Arizona. Unless Rule 42(d)(3) applies, or the parties agree or the court orders otherwise, a person served outside Arizona under Rule 42 must serve a responsive pleading within 30 days after the completion of service. Service of a responsive pleading must be made in the same manner, and the served person is subject to the same consequences, as if the person had been personally served with a summons in the county in which the action is pending.

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(m) **Service of Summons Upon Incarcerated Persons Located Outside Arizona but Within the United States.** Service upon a person who is incarcerated in a jail, prison, or correctional facility located outside of this state shall be effected by service in the manner set forth in paragraph C, except that if service is by mail or national courier service, the return or confirmation of service may be made by an official of the jail, prison or correctional facility, and the signature of an official of a jail, prison or correctional facility on the return receipt or signature confirmation is sufficient proof of service on the party being served.

COMMITTEE COMMENT

[Amended in 2007] This rule is based on Rule 4.2, Arizona Rules of Civil Procedure. Rules 41(M) and 42(D) are intended to require personal service prior to the court adjudicating issues of paternity, child support, spousal maintenance, division of marital

~~property or any other issue that does require personal jurisdiction over the parties. Taylor v. Jarrett, 191 Ariz. 550, 959 F. 2d 807 (App. 1998). Service by publication is sufficient for the court to dissolve a marriage, enter custody orders and resolve any other in rem or quasi in rem issue that does not require personal jurisdiction. This rule does not follow the holding in Master Financial, Inc. v. Woodburn, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), applicable to Rule 4.1, Arizona Rules of Civil Procedure.~~

~~The purpose of paragraph C is to allow service out of state not only through the U.S. Postal Service, but also through other national courier services, such as Federal Express, DHL and United Parcel Service, which provide service and delivery of parcels with signature confirmation of delivery. These services provide for on-line tracking of parcels and signature confirmation, which can be viewed and printed from a computer.~~

{Reserved}

Rule 46. Dismissal

(a) Voluntary Dismissal.

(1) ***By Notice, Motion, or ~~By~~ Stipulated Order.*** A ~~Ppetitioner~~ ppetitioner may dismiss a family law case: ~~or a post-decree petition:~~ ~~[**JWR Note:** None of the exceptions in the civil rules apply here.]~~

(A) by filing a notice of dismissal before the opposing party files ~~[**JWR Note:** This language reflects 2009 amendment that replaced "served" with "filed."]~~ a response or, if a response is not required, ~~there is no responsive pleading~~, before evidence is introduced at a hearing or trial; ~~[**JWR Note:** Is this ever going to be the case? Yes in many post decree matters (Rule 91)]; or~~

~~(A)~~**(B)** if a response has been filed, only by motion and upon such terms and conditions as the court deems proper, including the resolution of any claims by the responding party; or

~~(B)~~**(C)** by court ~~Ooo~~order based on ~~a~~a stipulation to dismiss ~~Sstipulation(agreement) of Ddismissal~~ that is signed by all parties who have appeared. ~~A judge, an authorized court commissioner, the clerk, or a deputy clerk may sign the order.~~

(2) ***Effect.*** Unless the ~~notice or~~ ~~Oorder~~ oorder states otherwise, a dismissal under (a)(1) is without prejudice.

(b) Involuntary Dismissal; Effect.

(1) ***Dismissal on the Respondent's Motion.*** If a ~~Ppetitioner~~ ppetitioner fails to move forward with their ~~prosecute a~~ case, or fails to comply with these rules or a court order, the ~~Rrespondent~~ rrespondent may move to dismiss the action or any claim against the ~~Rrespondentrr~~respondent.

(2) ***Dismissal by ~~C~~ the court ~~on Its Own~~.***

(A) *Generally.* The ~~Ccourt~~ ceourt may dismiss any action, post-decree petition, or any pending claim for failure to move a case forward ~~prosecute the matter~~ after giving all parties notice and an opportunity to object or begin moving forward with their case. ~~prosecution.~~

(B) *No Motion to Set.* If no party has filed a motion to set within 120 days after a petition is filed and served ~~petition's filing~~ and if the ~~Ccourt~~ ceourt has not set the matter for trial, hearing, or conference, the ~~Ccourt~~ ceourt may issue a notice that the matter will be dismissed without further notice in not less than 60 days if the parties do not file within that time a motion to set or a request

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Commented [AN-C1]: This is from Civil Rule 41(a) but I prefer the current FC rule where the judicial officer looks for pending issues before signing the order. Line staff clerks wouldn't know to check for pending matters or that the AG signed as a party in IV-D cases.

for hearing or conference. If no motion or request is filed within 60 days after the notice is issued, the ~~Ccourt~~ ccourt may dismiss the action. The court may extend these deadlines for good cause. The ~~Ccourt~~ ccourt may not dismiss a case if there is a pending motion for judgment on the pleadings, a pending motion for summary judgment, or a motion related to genetic testing in a paternity matter.

(3) ***Effect.*** Unless the dismissal order or notice states otherwise, a dismissal under (b)(1) or (2) is without prejudice.

(c) Dismissal ~~of~~ of Counterclaims and Third Party Claims ~~and Counterclaims~~. A counterclaimant or a third party may voluntarily dismiss ~~a~~ their claim by filing a ~~Notice~~ notice of ~~Dismissal~~ dismissal before an opposing party files a response or answer, if a response or answer is not required, before evidence is introduced at a hearing or trial. If a response or answer has been filed, the court may dismiss the claim only by motion and upon such terms and conditions as the court deems proper, including the resolution of any claims by the opposing party. ~~Counterclaims Claimants (or) A person who filed a counterclaim may voluntarily dismiss that may voluntarily dismiss a claim by filing a Notice of Dismissal before an opposing party files a response or, if a response is not required, before evidence is introduced at a hearing or trial.~~

~~**(d) Dismissal of Third-Party Claims and Counterclaims.** This rule applies to a dismissal of any counterclaim or third-party claim. A third-party claimant may voluntarily dismiss a claim by filing a notice of dismissal [**JWR Note:** Not sure if this sentence is necessary. If the rule applies to third-party claims, then (a) would apply. But may need to keep if you delete the "if there no responsive pleading" language in (a).], but must do so before an opposing party files [**JWR Note:** This language reflects 2009 amendment that replaced "served" with "filed."] a response or, if there is no responsive pleading, before evidence is introduced at a hearing or trial [**JWR Note:** Is this ever going to be the case?].~~

(e) Scope of Dismissal. The entry of an order dismissing a case serves to dismiss all pending, unresolved ~~unadjudicated~~ petitions and issues, but the order does not dismiss, vacate, or set aside any final decree, judgment or order previously entered in the case, unless the order specifies otherwise.

(f) Dismissal Authority. The ~~Cc~~court's authority to issue notices and dismiss cases ~~and post-decree petitions~~ for lack of service and for lack of moving a case forward

~~prosecution~~ may be performed by court administrators or by an appropriate electronic process under the court's supervision.

Rule 46. Dismissal

(a) Voluntary Dismissal.

(1) ***By Notice, Motion, or Stipulated Order.*** A petitioner may dismiss a family law case:

(A) by filing a notice of dismissal before the opposing party files a response or, if a response is not required, before evidence is introduced at a hearing or trial;

(B) if a response has been filed, only by motion and upon such terms and conditions as the court deems proper, including the resolution of any claims by the responding party; or

(C) by court ~~o~~rder based on a stipulation to dismiss that is signed by all parties who have appeared.

(2) ***Effect.*** Unless the order states otherwise, a dismissal under (a)(1) is without prejudice.

(b) Involuntary Dismissal; Effect.

(1) ***Dismissal on the Respondent's Motion.*** If a petitioner fails to move forward with their case, or fails to comply with these rules or a court order, the respondent may move to dismiss the action or any claim against the respondent.

(2) ***Dismissal by the court.***

(A) *Generally.* The court may dismiss any action, post-decree petition, or any pending claim for failure to move a case forward after giving all parties notice and an opportunity to object or begin moving forward with their case.

(B) *No Motion to Set.* If no party has filed a motion to set within 120 days after a petition is filed and served and if the court has not set the matter for trial, hearing, or conference, the court may issue a notice that the matter will be dismissed without further notice in not less than 60 days if the parties do not file within that time a motion to set or a request for hearing or conference. If no motion or request is filed within 60 days after the notice is issued, the court may dismiss the action. The court may extend these deadlines for good cause. The court may not dismiss a case if there is a pending motion for judgment on the pleadings, a pending motion for summary judgment, or a motion related to genetic testing in a paternity matter.

(3) ***Effect.*** Unless the dismissal order or notice states otherwise, a dismissal under (b)(1) or (2) is without prejudice.

(c) Dismissal of Counterclaims and Third Party Claims. A counterclaimant or a third party may voluntarily dismiss their claim by filing a notice of dismissal before an opposing party files a response or answer, if a response or answer is not required, before evidence is introduced at a hearing or trial. If a response or answer has been filed, the court may dismiss the claim only by motion and upon such terms and conditions as the court deems proper, including the resolution of any claims by the opposing party.

(d) Scope of Dismissal. The entry of an order dismissing a case serves to dismiss all pending, unresolved petitions and issues, but the order does not dismiss, vacate, or set aside any final decree, judgment or order previously entered in the case, unless the order specifies otherwise.

(e) Dismissal Authority. The court's authority to issue notices and dismiss cases for lack of service and for lack of moving a case forward may be performed by court administrators or by an appropriate electronic process under the court's supervision.

Rule 65. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery.

(1) ***Generally.*** A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule XX.

~~**(2)** ***Appropriate Court.*** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court in the county where the discovery is or will be taken.~~

~~(3)~~(2) ***Specific Motions.***

(1) *To Compel Disclosure.* If a party fails to ~~make a disclosure~~ disclose information required by Rule 49, ~~another~~ the other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if any person or entity has not complied with a discovery rule.~~:~~

~~**(A)** a deponent fails to answer a question asked under Rule 57 or 58;~~

~~**(B)** a corporation or other entity fails to make a designation under Rule 57(b)(6) or 58;~~

~~**(C)** a party fails to answer an interrogatory served under Rule 60;~~

~~**(D)** a party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 62; or~~

~~**(E)** a person fails to produce materials requested in a subpoena served under Rule 52.~~

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may ~~complete~~ complete, continue with, or adjourn the examination before moving for an order to compel an answer.

~~(4)~~(3) ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

~~(5)~~(4) ***Payment of Expenses~~~~; Protective Orders~~.***

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is

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provided after the motion was filed—the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, ~~the party or attorney advising that conduct, or both,~~ to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. ~~But the~~ The court may not order this payment if:

(A) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(B) the opposing party's nondisclosure, response, or objection was ~~substantially justified~~ in good faith; or

(C) other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the court ~~court may issue any protective order authorized under Rule 53 and~~ may, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both, to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. ~~But the~~ The court may not order this payment if the motion was ~~substantially justified~~ filed in good faith or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court ~~may issue any protective order authorized under Rule 53 and~~ may, after giving an opportunity to be heard, apportion the reasonable expenses, including attorney's fees, for the motion.

(b) Failure to Comply with ~~a~~ Court Order, Discovery or Disclosure Rule; Sanctions.

~~***(1) Sanctions by the Court in the County Where the Deposition Is Taken.*** If the court in the county where the deposition is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.~~

~~***(2) Sanctions by the Court Where the Action Is Pending.***~~

(1) *For Not Obeying a Discovery Order or Rule.* If a ~~party or a party's officer, director, or managing agent—or a witness designated under Rule 57(b)(6) or 58—fails~~ person fails to obey an order to provide or permit discovery, ~~,~~ or fails to comply with a disclosure or discovery rule, ~~including an order under Rule 63 or 65(a),~~ the court ~~where the action is pending~~ may enter ~~further just orders. They may include~~ sanctions including, but not limited to, the following:

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(A) directing that ~~the matters described in the order or other~~ designated facts be taken as established for purposes of the action~~, as the prevailing party claims~~;

(B) prohibiting the disobedient party from supporting or opposing designated ~~claims or defenses~~ arguments, or from introducing designated matters in evidence;

(C) striking pleadings in whole or in part;

(D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part, unless dismissal would be contrary to the best interests of a child;

(F) rendering a default judgment, in whole or in part, against the disobedient party; or

(G) ~~treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.~~ scheduling a proceeding to treat the violation as contempt of court,

~~**(2)** *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 63(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 65(b)(2)(A)(i) through (vi), unless the disobedient party shows that it cannot produce the other person.~~

~~(3)~~(2) *Payment of Expenses.* Instead of or in addition to the orders above, the court may order the disobedient ~~party~~person~~,~~ or the person's ~~the~~ attorney ~~advising that party~~, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was~~was substantially justified~~ in good faith or other circumstances make an award of expenses unjust.

~~**(c) Failure to Timely Disclose; Inaccurate or Incomplete Disclosure; Disclosure After Deadline or During Trial.**~~

~~**(1)** ***Failure to Timely Disclose.*** Unless the court orders otherwise for good cause, a party who fails to timely disclose information, a witness, or a document required by Rule 49 may not, unless such failure is harmless, use the information, witness, or document as evidence at trial, at a hearing, or with respect to a motion.~~

~~**(2)** ***Inaccurate or Incomplete Disclosure.*** On motion, the court may order a party or attorney who makes a disclosure under Rule 49 that the party or attorney knew or should have known was inaccurate or incomplete to reimburse the opposing party for~~

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~~the reasonable cost, including attorney's fees, of any investigation or discovery caused by the inaccurate or incomplete disclosure.~~

~~(3) ***Other Available Sanctions.*** In addition to or instead of the sanctions under Rule 65(c)(1) and (2), the court, on motion and after giving an opportunity to be heard:~~

~~(1) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;~~

~~(2) may inform the jury of the party's failure; and~~

~~(3) may impose other appropriate sanctions, including any of the orders listed in Rule 65(b)(2)(A)(i) through (vi).~~

~~(4)~~ (c) **Use of Information, Witness, or Document Disclosed After Scheduling Order or Case Management Order Deadline or Later Than ~~60~~ 30 Days Before Trial.** A party seeking to use information, a witness, or a document that it first disclosed later than the deadline set in a Scheduling Order or a Case Management Order, or—in the absence of such a deadline—less than 30 days before trial, must obtain leave of court by motion. ~~[**JWR Note**: Currently, Family Law Rule 65(C)(2) says 30 days, which departed from the old Civil Rule, which (like here) said 60 days. I assume the difference was intentional, and so I have replaced 60 with 30.]~~ The motion must be supported by affidavit and must show that:

(1) ~~the information, witness, or document would be allowed under the standards of Rule 65(dc)(1); and~~ the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

~~(1)~~

(2) the party disclosed the information, witness, or document as soon as practicable after its discovery.

~~(5) ***Use of Information, Witness, or Document Disclosed During Trial.*** A party seeking to use information, a witness, or a document that it first disclosed during trial must obtain leave of court by motion. The motion must be supported by affidavit and must show that:~~

~~(1) the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and~~

~~(2) the party disclosed the information, witness, or document immediately upon its discovery.~~

~~(d) **Failure to Timely Disclose Unfavorable Information.** If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information~~

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required under Rule 49, the court may impose serious sanctions, up to and including dismissal of the action – or rendering of a default judgment – in whole or in part.

(c) Expenses on Failure to Admit. If a party fails to admit what is requested under Rule 64 and if the requesting party later proves the matter true – including the genuineness of a document – the requesting party may move that the non-admitting party pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(1) the request was held objectionable under Rule 64(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) there was other good reason for the failure to admit.

(f) Party's Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.

(1) ***Generally.***

(1) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(A) a party or a party's officer, director, or managing agent – or a person designated under Rule 57(b)(6) or 58 – fails, after being served with proper notice, to appear for his or her deposition; or

(B) a party – after being properly served with interrogatories under Rule 60 or requests for production under Rule 62 – fails to serve its answers, objections, or written response.

(2) *Certification.* A motion for sanctions for failing to answer or respond must attach a good faith consultation certificate complying with Rule XX35(h).?

(2) ***Unacceptable Excuse for Failing to Act.*** A failure described in Rule 65(b)(1f)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 51(c).

(3) ***Types of Sanctions.*** Sanctions may include any of the orders listed in Rule 65((b))(21)(A) (Gi) through (vi). Instead of or in addition to these sanctions, the court may require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses – including attorney's fees – caused by the

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~~failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.~~

~~(g)~~(c) **Failure to Preserve Electronically Stored Information.**

(1) ***Duty to Preserve.***

(1) *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the ~~action~~ litigation, or once it reasonably anticipates the litigation~~action~~'s commencement, whichever occurs first. A court order or statute also may impose a duty to preserve certain information.

(2) *Reasonable Anticipation.* A person reasonably anticipates an action's commencement if:

(A) it knows or reasonably should know that it is likely to be a d~~efendant~~ party in a specific action; or

(B) it seriously contemplates commencing an action or takes specific steps to do so.

(3) *Reasonable Steps to Preserve.*

(A) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(B) Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system, the timeliness of the party's actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the parties' resources and technical sophistication, and the amount in controversy.

(2) ***Remedies and Sanctions.*** If electronically stored information that should have been preserved is lost because a party--either before or after an action's commencement--failed to take reasonable steps to preserve it, a court may order additional discovery to restore or replace it, including, if appropriate, an order

under Rule 51(b)(2). If the information cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

COMMITTEE COMMENT

This rule is based upon Rule 37, Arizona Rules of Civil Procedure.

[**JWR Note:** The Task Force Workgroup will need to consider whether to incorporate the Civil Justice Reform Committee recommendations with respect to Rule 37. I haven't attempted to incorporate them here, and perhaps the Task Force might want to wait until next September to consider the issue, after the Supreme Court acts on the proposed changes.]

Rule 65. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery.

(1) ***Generally.*** A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule XX.

(2) ***Specific Motions.***

(1) *To Compel Disclosure.* If a party fails to disclose information required by Rule 49, the other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if any person or entity has not complied with a discovery rule.

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete, continue with, or adjourn the examination before moving for an order to compel an answer.

(3) ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

(4) ***Payment of Expenses.***

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. The court may not order this payment if:

(A) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(B) the opposing party's nondisclosure, response, or objection was in good faith; or

(C) other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the court may, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or

both, to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. The court may not order this payment if the motion was filed in good faith or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may, after giving an opportunity to be heard, apportion the reasonable expenses, including attorney's fees, for the motion.

(b) Failure to Comply with Court Order, Discovery or Disclosure Rule; Sanctions.

(1) *For Not Obeying a Discovery Order or Rule.* If a person fails to obey an order to provide or permit discovery, or fails to comply with a disclosure or discovery rule, the court may enter sanctions including, but not limited to, the following:

(A) directing that designated facts be taken as established for purposes of the action;

(B) prohibiting the disobedient party from supporting or opposing designated arguments, or from introducing designated matters in evidence;

(C) striking pleadings in whole or in part;

(D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part, unless dismissal would be contrary to the best interests of a child;

(F) rendering a default judgment, in whole or in part, against the disobedient party; or

(G) scheduling a proceeding to treat the violation as contempt of court,

(2) *Payment of Expenses.* Instead of or in addition to the orders above, the court may order the disobedient person or the person's attorney, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was in good faith or other circumstances make an award of expenses unjust.

(c) Use of Information, Witness, or Document Disclosed After Scheduling Order or Case Management Order Deadline or Later Than ~~60~~ 30 Days Before Trial. A party seeking to use information, a witness, or a document that it first disclosed later than the deadline set in a Scheduling Order or a Case Management Order, or—in the absence of such a deadline—less than 30 days before trial, must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(1) the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

(2) the party disclosed the information, witness, or document as soon as practicable after its discovery.

(c) Failure to Preserve Electronically Stored Information.

(1) ***Duty to Preserve.***

(1) *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the litigation, or once it reasonably anticipates the litigation's commencement, whichever occurs first. A court order or statute also may impose a duty to preserve certain information.

(2) *Reasonable Anticipation.* A person reasonably anticipates an action's commencement if:

(A) it knows or reasonably should know that it is likely to be a dparty in a specific action; or

(B) it seriously contemplates commencing an action or takes specific steps to do so.

(3) *Reasonable Steps to Preserve.*

(A) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(B) Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system, the timeliness of the party's actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the parties' resources and technical sophistication, and the amount in controversy.

(2) ***Remedies and Sanctions.*** If electronically stored information that should have been preserved is lost because a party--either before or after an action's commencement--failed to take reasonable steps to preserve it, a court may order

additional discovery to restore or replace it, including, if appropriate, an order under Rule 51(b)(2). If the information cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

COMMITTEE COMMENT

This rule is based upon Rule 37, Arizona Rules of Civil Procedure.

[**JWR Note:** The Task Force Workgroup will need to consider whether to incorporate the Civil Justice Reform Committee recommendations with respect to Rule 37. I haven't attempted to incorporate them here, and perhaps the Task Force might want to wait until next September to consider the issue, after the Supreme Court acts on the proposed changes.]

Rule 69. Binding Agreements

(a) ~~Presumption of~~ Validity. An agreement between the parties is ~~presumed to be~~ valid and binding on the parties if:

(1) the agreement is in writing and signed by the parties personally;

(2) the agreement's terms are stated on the record before a judge, commissioner, or judge pro tempore~~,~~ or court reporter; ~~court reporter, or other person authorized by local rule or administrative order to accept such agreements; [**Note:** Does (2) impose, unlike (3), an additional condition of acceptance of the agreement?] or~~;

(3) the agreement's terms are stated in an audio recording made ~~before a mediator or settlement conference officer appointed by the court~~ under Rule 67(B)(1).

~~(a)~~ ~~(b)~~ **Court Approval.** An agreement under (a)(1) or (a)(2) is not binding on the court until it is submitted to and approved by the court.

(b)

~~(b)~~(c) **Challenge to Validity.** An agreement under (a) is presumed valid, and a party ~~challenging~~ who challenges the validity of an agreement has the burden to prove any defect in the agreement. Under A.R.S. § 25-324, the court may award a ~~prevailing~~ party [**JWR Note:** The statute (and the current rule) doesn't limit fee awards to prevailing parties] the cost and expenses of maintaining or defending a challenge to the validity of an agreement that was made in accordance with this rule.

~~(c)~~(d) **Separation Agreements.** This rule does not limit the court's discretion under A.R.S. § 25-317 concerning separation agreements.

COMMITTEE COMMENT [AMENDED EFFECTIVE JANUARY 1, 2009]

Arizona Constitution, Article 6, § 30 designates the superior court as a court of record. A proceeding or agreement is "on the record" if it is conducted or memorialized by a court reporter in accordance with A.R.S. § 12-221 to 12-225, or if recorded by any recording device authorized by law. A.R.S. § 38-424 currently authorizes the use of "tape recorders or other recording devices in lieu of reporters or stenographers." This rule also contemplates that the parties may reach binding agreements at the time a deposition is conducted if both parties are present or represented by counsel, and the agreement is recited on the record. This rule is adapted from Rule 80(d), Arizona Rules of Civil Procedure.

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Rule 69. Binding Agreements

(a) Validity. An agreement between the parties is valid and binding on the parties if:

(1) the agreement is in writing and signed by the parties personally;

(2) the agreement's terms are stated on the record before a judge, commissioner, or judge pro tempore or court reporter;;

(3) the agreement's terms are stated in an audio recording made under Rule 67(B)(1).

(b) Court Approval. An agreement under (a)(1) or (a)(2) is not binding on the court until it is submitted to and approved by the court.

(c) Challenge to Validity. An agreement under (a) is presumed valid, and a party who challenges the validity of an agreement has the burden to prove any defect in the agreement. Under A.R.S. § 25-324, the court may award a ~~prevailing~~ party [**JWR Note:** The statute (and the current rule) doesn't limit fee awards to prevailing parties] the cost and expenses of maintaining or defending a challenge to the validity of an agreement that was made in accordance with this rule.

(d) Separation Agreements. This rule does not limit the court's discretion under A.R.S. § 25-317 concerning separation agreements.

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Arizona Constitution, Article 6, § 30 designates the superior court as a court of record. A proceeding or agreement is "on the record" if it is conducted or memorialized by a court reporter in accordance with A.R.S. § 12-221 to 12-225, or if recorded by any recording device authorized by law. A.R.S. § 38-424 currently authorizes the use of "tape recorders or other recording devices in lieu of reporters or stenographers." This rule also contemplates that the parties may reach binding agreements at the time a deposition is conducted if both parties are present or represented by counsel, and the agreement is recited on the record. This rule is adapted from Rule 80(d), Arizona Rules of Civil Procedure.

Rule 70. Notice of Settlement

(a) Notice of Settlement. An attorney of record, and any party not represented by counsel, has a duty to give the assigned judge or commissioner, the clerk, and the court administrator prompt notice of the settlement of any matter set for trial, hearing, or argument. If an attorney or unrepresented party does not give prompt notice, the court may impose sanctions on the attorney or the party ~~to ensure future compliance with this rule~~.

(b) Settlement Without Final Judgment. If the parties have notified the court that a matter set for trial or hearing has been settled, but the parties do not present a final judgment, decree, or order to the court, the court may dismiss the case without further notice unless a final judgment, decree, or order is filed ~~[and entered in the record][**JWR Note:** This clause is unnecessary. If it is filed, what else is needed? Seems redundant]~~ within 45 ~~days~~ days thereafter ~~the parties notify the court~~. Alternatively, the court may require the parties to place their agreement on the record, as provided in Rule 69, at or before the time set for trial or hearing. The court also may take other action to ensure the entry of a final judgment, decree, or order.

COMMITTEE COMMENT [AMENDED 2007]

Paragraph A is based on Rule 5.1(c), *Arizona Rules of Civil Procedure*.

Rule 70. Notice of Settlement

(a) Notice of Settlement. An attorney of record, and any party not represented by counsel, has a duty to give the assigned judge or commissioner, the clerk, and the court administrator prompt notice of the settlement of any matter set for trial, hearing, or argument. If an attorney or unrepresented party does not give prompt notice, the court may impose sanctions on the attorney or the party.

(b) Settlement Without Final Judgment. If the parties have notified the court that a matter set for trial or hearing has been settled, but the parties do not present a final judgment, decree, or order to the court, the court may dismiss the case without further notice unless a final judgment, decree, or order is filed within 45 days thereafter. Alternatively, the court may require the parties to place their agreement on the record, as provided in Rule 69, at or before the time set for trial or hearing. The court also may take other action to ensure the entry of a final judgment, decree, or order.

COMMITTEE COMMENT [AMENDED 2007]

Paragraph A is based on Rule 5.1(c), *Arizona Rules of Civil Procedure*.

Rule 72. Family Law Master

(a) Appointment and Compensation.

a) ***Appointment.*** On written stipulation by the parties or the parties' oral agreement on the record in open court, the court may appoint a family law master who is an attorney or other professional with education, experience, and special expertise regarding the particular issues to be referred to the master.

b) ***Compensation.*** The court will determine the master's allowed compensation. The court will allocate the master's compensation among the parties, which will be treated as a taxable cost.

c) ***Party Stipulation.*** The parties may stipulate to the appointment of a particular person to serve as a master and the amount of compensation, but before such a person may be appointed, the court must still approve the appointment and the proposed compensation after reviewing the person's qualifications

(b) Powers.

a) ***Order of Reference and Scope of Authority.***

(A) *Contents of Order.* The order of reference appointing a family law master must specify the particular issues referred to the master and must fix the time and place for beginning and closing any hearings and for filing the master's report.

(B) *Scope of Authority.* An order of reference may not direct a master to perform services within the scope of Rule 74 or to otherwise make decisions or recommendations concerning legal decision-making or parenting time. Other than these subjects, the master may determine with any issues under A.R.S. Title 25 that could be presented to the assigned judge, including post-decree matters.

b) ***Proceedings Before a Master.***

(A) *Generally.* Subject to any limitations in the order of reference, the master may exercise the power to regulate all proceedings in every hearing before the master, and may do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order.

(B) *Discovery.* The master may require the production of evidence on all matters embraced in the order of reference.

(C) *Evidence Admissibility and Witness Testimony.* The master may rule on the admissibility of evidence, unless otherwise directed by the order of reference, and has the authority to place witnesses under oath and examine them.

(D) *Procedural and Evidentiary Rules.* Unless stipulated otherwise, Rule 2(B) and these rules apply to all proceedings before the master.

(E) *Record.* If a party requests it, the master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Arizona Rule of Evidence104 for a court sitting without a jury. The court must allocate the cost of creating the record among the parties, with allocated costs being treated as a taxable cost.

(c) Meetings.

a) ***First Meeting.*** Upon receipt of an order of reference, the master must set a time and place for the first meeting of the parties or their attorneys. The first meeting should be held no later than 20 days after the order of reference is filed.

b) ***Notice.*** The master must provide the parties reasonable notice of the first and any later meeting.

c) ***Proceeding with Reasonable Diligence.*** In scheduling meetings and otherwise discharging the master's authority under the order of reference, the master must proceed with all reasonable diligence.

d) ***Failure to Appear.*** If a party fails to appear at a scheduled meeting, the master may proceed ex parte or, in the master's discretion, reschedule the meeting with notice to the parties.

(d) Witnesses. The parties may procure the attendance of witnesses before the master by the issuing and serving subpoenas as provided in Rule 52. If a witness fails to appear or give evidence without adequate excuse, the court may hold the witness in contempt and order the sanctions and remedies provided in Rules 52 and 65. [**JWR Note:** This is important to clarify because it comes up on the civil side—the master can't sanction anybody; only the court can.]

(e) Report.

a) ***Generally.*** The master must prepare a report on the matters submitted to the master by the order of reference, including requested findings of fact and conclusions of law concerning disputed issues. Before filing the report, a master may circulate a draft to the parties' counsel and solicit their comments and suggestions.

b) ***Filing.*** The master must file the final report with the clerk. Unless the order of reference orders otherwise, the master also must file any transcript of the proceedings and the evidence and original exhibits submitted by the parties.

c) ***Mailing.*** The master must mail a copy of the report to each of the parties on the same day the master files the report with the clerk.

(f) Objections.

a) ***Procedure.*** A party may object to the master's report by filing a motion under Rule 35 to modify or reject the master's report but must do so no later than 15 days after the master's report is mailed. Each objection must be stated with specificity and must reference the exhibits or portions of the record supporting the objection.

b) ***Response and Further Briefing***. Any response to an objection must be filed no later than 10 days after the objection is served. No further briefing may be filed without a prior court order authorizing it.

(g) Court Actions.

a) ***If No Objection Is Made.*** If no objection is filed by either party, the master's report will become an order of the court, unless the court sets a hearing on a particular issue in the report within 10 days after the due date for filing an objection.

b) ***If an Objection Is Made.*** If an objection is filed, the court may set oral argument on the objection, adopt the report, modify it, wholly or partly reject it, or receive further evidence. The court must hold a hearing or enter an order regarding the objection no later than 30 days after a response or later court-authorized brief is filed.

(h) Stipulation as to Findings. When the master is appointed, the parties may stipulate that a master's findings of fact will be final. If the parties have filed such a stipulation, the court may consider only questions of law arising from the master's report. Absent such a stipulation, the court may not reverse a finding of fact by the special master unless it is clearly erroneous, but it must review de novo the master's conclusions of law.

(i) Sanctions. The court may impose sanctions on any party or counsel in connection with proceedings before a master under this rule for conduct intended to harass another party or a witness, cause unnecessary delay, or needlessly increase the cost of litigation. The master also may make recommendations to the court for imposing sanctions under these rules, case law, or statute.

(j) Immunity. A family law master has immunity in accordance with Arizona law as to all acts undertaken under and consistent with the order of reference.

(k) Applicability. No county is required to employ or use family law masters, but these rules apply if a county does so.

~~(k)~~ Rule 72.1. Retirement, Benefits, Stock Options, and Other Employment Related Compensation.

~~(l) Retirement, Benefits, Stock Options, and Other Employment Related Compensation.~~ [**JWR Note:** I think the revisions are consistent with the intent, but the Task Force should take a careful look at this rule to make sure it is consistent with what the Task Force wants.]

a) ***Appointment of a Master with Special Expertise.*** If a court order requires retirement benefits, stock options or other employment related benefits to be divided, the court may appoint an attorney or other professional with the appropriate expertise to carry out the division that the court has ordered.~~.~~

b) ***Order of Reference.*** The court's order of reference must identify the specific assets to be ~~so~~ divided.~~, whether a determination is to be made as to the community's interest in such assets, and any other special determinations to be made.~~

c) ***Additional Discovery Authority.*** A court's order of reference must authorize a master appointed under (*l*)(1) to:

(A) require the production of documents;

(B) require answers to interrogatories; and

(C) issue subpoenas to obtain any needed records.

d) ***Additional Authority.*** In addition to the other powers specifically listed elsewhere in this rule, a master appointed under ~~(*l*)(1)~~ this rule has the power to order the appearance of any party using that party's most recent available address.

e) ***Determination.*** Subject to the procedures elsewhere in this rule, a master appointed under ~~(*l*)(1)~~ this rule must proceed to ~~determine~~ allocate the parties' relative interests and any other issues submitted to the master by the order of reference. The master may make this determination even if a party does not appear or present to the master a position on the merits of the parties' claims or the terms of dividing retirement benefits, stock options, or other employment related benefits. In making the determination, the master must take into account

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the availability of records and the cooperativeness of the parties in assisting the master in making the determination. In the event the master finds the division requires the use of discretion, the master must request a judicial determination of the issue.

~~**(m) Effective Date.** The rule as it exists on January 1, 2018, applies to any appointment or reappointment of a family law master that occurs on or after January 1, 2017. All family law master appointments made before January 1, 2018, continue to be governed by the prior version of Rule 72 for the remaining term of that appointment. [**JWR Note:** Do we really want to include this provision in the rule? West will never stop publishing the old rule because it won't know whether when the terms of appointment expire for all masters appointed before January 1, 2018. We have had this problem before.]~~

Comment to 2017 Amendment

The Court recognizes that in cases involving complex property or financial issues, appointment of a neutral expert witness may be helpful to the court in resolving these issues. A court may appoint a neutral expert witness to testify concerning these issues pursuant to Arizona Rule of Evidence 706 over a party's objection and at the parties' expense upon a showing that the parties can afford the expert without undue hardship.

COMMITTEE COMMENT

This rule is based on Rule 53, Arizona Rules of Civil Procedure and is to be used for the same purposes as Rule 53. Depending on the issues, the master could be an attorney or a person with specialized knowledge on the issues referred to the family law master. A family law master may also be appointed to hear a pre-decree/prejudgment or post-decree case in the same manner that a judge or arbitrator would hear a case, except that the trial court judge would have the final decision after receiving the master's report and ruling on any objections. Where the issues are ongoing enforcement of custody or parenting time orders or related issues, a Parenting Coordinator should be appointed instead of a family law master, pursuant to Rule 74.

Rule 72. Family Law Master

(a) Appointment and Compensation.

a) ***Appointment.*** On written stipulation by the parties or the parties' oral agreement on the record in open court, the court may appoint a family law master who is an attorney or other professional with education, experience, and special expertise regarding the particular issues to be referred to the master.

b) ***Compensation.*** The court will determine the master's allowed compensation. The court will allocate the master's compensation among the parties, which will be treated as a taxable cost.

c) ***Party Stipulation.*** The parties may stipulate to the appointment of a particular person to serve as a master and the amount of compensation, but before such a person may be appointed, the court must still approve the appointment and the proposed compensation after reviewing the person's qualifications

(b) Powers.

a) ***Order of Reference and Scope of Authority.***

(A) *Contents of Order.* The order of reference appointing a family law master must specify the particular issues referred to the master and must fix the time and place for beginning and closing any hearings and for filing the master's report.

(B) *Scope of Authority.* An order of reference may not direct a master to perform services within the scope of Rule 74 or to otherwise make decisions or recommendations concerning legal decision-making or parenting time. Other than these subjects, the master may determine with any issues under A.R.S. Title 25 that could be presented to the assigned judge, including post-decree matters.

b) ***Proceedings Before a Master.***

(A) *Generally.* Subject to any limitations in the order of reference, the master may exercise the power to regulate all proceedings in every hearing before the master, and may do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order.

(B) *Discovery.* The master may require the production of evidence on all matters embraced in the order of reference.

(C) *Evidence Admissibility and Witness Testimony.* The master may rule on the admissibility of evidence, unless otherwise directed by the order of reference, and has the authority to place witnesses under oath and examine them.

(D) *Procedural and Evidentiary Rules.* Unless stipulated otherwise, Rule 2(B) and these rules apply to all proceedings before the master.

(E) *Record.* If a party requests it, the master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Arizona Rule of Evidence104 for a court sitting without a jury. The court must allocate the cost of creating the record among the parties, with allocated costs being treated as a taxable cost.

(c) Meetings.

a) ***First Meeting.*** Upon receipt of an order of reference, the master must set a time and place for the first meeting of the parties or their attorneys. The first meeting should be held no later than 20 days after the order of reference is filed.

b) ***Notice.*** The master must provide the parties reasonable notice of the first and any later meeting.

c) ***Proceeding with Reasonable Diligence.*** In scheduling meetings and otherwise discharging the master's authority under the order of reference, the master must proceed with all reasonable diligence.

d) ***Failure to Appear.*** If a party fails to appear at a scheduled meeting, the master may proceed ex parte or, in the master's discretion, reschedule the meeting with notice to the parties.

(d) Witnesses. The parties may procure the attendance of witnesses before the master by the issuing and serving subpoenas as provided in Rule 52. If a witness fails to appear or give evidence without adequate excuse, the court may hold the witness in contempt and order the sanctions and remedies provided in Rules 52 and 65. [**JWR Note:** This is important to clarify because it comes up on the civil side—the master can't sanction anybody; only the court can.]

(e) Report.

a) ***Generally.*** The master must prepare a report on the matters submitted to the master by the order of reference, including requested findings of fact and conclusions of law concerning disputed issues. Before filing the report, a master may circulate a draft to the parties' counsel and solicit their comments and suggestions.

b) ***Filing.*** The master must file the final report with the clerk. Unless the order of reference orders otherwise, the master also must file any transcript of the proceedings and the evidence and original exhibits submitted by the parties.

c) ***Mailing.*** The master must mail a copy of the report to each of the parties on the same day the master files the report with the clerk.

(f) Objections.

a) ***Procedure.*** A party may object to the master's report by filing a motion under Rule 35 to modify or reject the master's report but must do so no later than 15 days after the master's report is mailed. Each objection must be stated with specificity and must reference the exhibits or portions of the record supporting the objection.

b) ***Response and Further Briefing***. Any response to an objection must be filed no later than 10 days after the objection is served. No further briefing may be filed without a prior court order authorizing it.

(g) Court Actions.

a) ***If No Objection Is Made.*** If no objection is filed by either party, the master's report will become an order of the court, unless the court sets a hearing on a particular issue in the report within 10 days after the due date for filing an objection.

b) ***If an Objection Is Made.*** If an objection is filed, the court may set oral argument on the objection, adopt the report, modify it, wholly or partly reject it, or receive further evidence. The court must hold a hearing or enter an order regarding the objection no later than 30 days after a response or later court-authorized brief is filed.

(h) Stipulation as to Findings. When the master is appointed, the parties may stipulate that a master's findings of fact will be final. If the parties have filed such a stipulation, the court may consider only questions of law arising from the master's report. Absent such a stipulation, the court may not reverse a finding of fact by the special master unless it is clearly erroneous, but it must review de novo the master's conclusions of law.

(i) Sanctions. The court may impose sanctions on any party or counsel in connection with proceedings before a master under this rule for conduct intended to harass another party or a witness, cause unnecessary delay, or needlessly increase the cost of litigation. The master also may make recommendations to the court for imposing sanctions under these rules, case law, or statute.

(j) Immunity. A family law master has immunity in accordance with Arizona law as to all acts undertaken under and consistent with the order of reference.

(k) Applicability. No county is required to employ or use family law masters, but these rules apply if a county does so.

Rule 72.1. Retirement, Benefits, Stock Options, and Other Employment Related Compensation.

[**JWR Note:** I think the revisions are consistent with the intent, but the Task Force should take a careful look at this rule to make sure it is consistent with what the Task Force wants.]

a) ***Appointment of a Master with Special Expertise.*** If a court order requires retirement benefits, stock options or other employment related benefits to be divided, the court may appoint an attorney or other professional with the appropriate expertise to carry out the division that the court has ordered.

b) ***Order of Reference.*** The court's order of reference must identify the specific assets to be divided.

c) ***Additional Discovery Authority.*** A court's order of reference must authorize a master appointed under (*l*)(1) to:

(A) require the production of documents;

(B) require answers to interrogatories; and

(C) issue subpoenas to obtain any needed records.

d) ***Additional Authority.*** In addition to the other powers specifically listed elsewhere in this rule, a master appointed under this rule has the power to order the appearance of any party using that party's most recent available address.

e) ***Determination.*** Subject to the procedures elsewhere in this rule, a master appointed under this rule must proceed to allocate the parties' relative interests and any other issues submitted to the master by the order of reference. The master may make this determination even if a party does not appear or present to the master a position on the merits of the parties' claims or the terms of dividing retirement benefits, stock options, or other employment related benefits. In making the determination, the master must take into account the availability of records and the cooperativeness of the parties in assisting the master in making the determination. In the event the master finds the division requires the use of discretion, the master must request a judicial determination of the issue.

Comment to 2017 Amendment

The Court recognizes that in cases involving complex property or financial issues, appointment of a neutral expert witness may be helpful to the court in resolving these issues. A court may appoint a neutral expert witness to testify concerning these issues pursuant to Arizona Rule of Evidence 706 over a party's objection and at the parties' expense upon a showing that the parties can afford the expert without undue hardship.

COMMITTEE COMMENT

This rule is based on Rule 53, Arizona Rules of Civil Procedure and is to be used for the same purposes as Rule 53. Depending on the issues, the master could be an attorney or a person with specialized knowledge on the issues referred to the family law master. A family law master may also be appointed to hear a pre-decree/prejudgment or post-decree case in the same manner that a judge or arbitrator would hear a case, except that the trial court judge would have the final decision after receiving the master's report and ruling on any objections. Where the issues are ongoing enforcement of custody or parenting time orders or related issues, a Parenting Coordinator should be appointed instead of a family law master, pursuant to Rule 74.

Note to Rule 74:

The meeting materials contain three Word versions of Rule 74.

- The first version is current Rule 74.

- The second is the OneDrive version of Rule 74 (staff's restyling.)

- The third compares the first and second documents, and shows changes that staff's restyling made to the current rule. The changes concern the organization, syntax, and grammar for the rule, but no substantive changes were intended.

Rule 74. Parenting Coordinator

(a) Purpose of Parenting Coordination. Parenting coordination is a child-focused alternative dispute resolution process. The overall objective of parenting coordination is to assist parents with implementation, compliance, and timely conflict resolution regarding their parenting plan and legal decision-making orders so as to protect and sustain safe, healthy, and meaningful parent-child relationships.

(b) Appointment of a Parenting Coordinator. The court may appoint a third party as a parenting coordinator in proceedings under Title 25, A.R.S., at any time after entry of a legal decision-making or parenting time order only if each parent has agreed to the appointment either by written stipulation or orally on the record in open court.

The stipulation must state:

(1) each parent understands how the parenting coordinator bills for services, including the parenting coordinator's hourly rate, and the parents can afford the parenting coordinator's services;

(2) the manner in which the parenting coordinator's fees will be allocated between the parents;

(3) the method by which the parenting coordinator will be selected or the name of the agreed-upon parenting coordinator;

(4) the parents agree to the release of documents the parenting coordinator deems necessary to the performance of the parenting coordinator's services;

(5) the term of the appointment; and

(6) the parents agree to be bound by decisions made by the parenting coordinator that fall within the scope of the parenting coordinator's authority and relate to issues submitted to the parenting coordinator for decision.

Nothing in this rule is intended to prevent parents from requesting, or a court from appointing, parenting coordination assistance through the court's conciliation court services, if available. Parents obtaining parenting coordinator services through the court's conciliation court services must agree to subdivisions 4-6 above.

(c) Selection of a Parenting Coordinator. A parenting coordinator appointed by the court must qualify as a parenting coordinator under paragraph D. A person appointed as a parenting coordinator cannot serve in any other function or role in the case, except that each parent and the parenting coordinator may agree that a person who is serving or has already served in a legal, treatment, evaluative, or therapeutic role in the case can be appointed as the parenting coordinator.

(d) Persons Who Can Serve as a Parenting Coordinator. The following persons can serve as a parenting coordinator:

(1) an attorney who is licensed to practice law in Arizona;

(2) a psychiatrist who is licensed to practice medicine or osteopathy in Arizona;

(3) a psychologist who is licensed to practice psychology in Arizona;

(4) a person who is licensed to practice independently by the Arizona Board of Behavioral Health Examiners;

(5) professional staff of a court's conciliation services department; or

(6) a person with education, experience, and expertise who is deemed qualified by the court's presiding judge or a designee.

The court can set additional requirements for service as a parenting coordinator.

(e) Term of Service. The term of the parenting coordinator will be designated in the order of appointment.

(1) *Initial Term.* A parenting coordinator's initial term cannot exceed one year unless each parent and the parenting coordinator agree to a longer term.

(2) *Reappointment.* The parenting coordinator cannot be reappointed at the end of the term unless each parent and the parenting coordinator agree to the reappointment in writing or orally on the record in open court. By agreeing to the reappointment, each parent is acknowledging the parent's understanding and acceptance of subdivisions 1-6 in paragraph B, above. The reappointment term cannot exceed one year unless each parent and the parenting coordinator agree to a longer term.

(3) *Replacement of the Parenting Coordinator.* Both parents can agree to replace the existing parenting coordinator by stipulating to the replacement in writing or orally on the record in open court. The stipulation that replaces the parenting coordinator must also contain the stipulations in subdivisions 1-6 in paragraph B, above.

(4) *Resignation.* The parenting coordinator can resign upon notice to each parent and order of the court.

(5) *Discharge.* Both parents can jointly agree to discharge the parenting coordinator during the term of appointment. If only one parent wishes to discharge the parenting coordinator, that parent must file a motion with the court that establishes good cause for the requested relief. Disagreeing with one or more of

the parenting coordinator's decisions does not constitute good cause for discharging the parenting coordinator.

(f) Fees.

(1) *Disclosure of Fees.* The parenting coordinator must fully disclose all fees and charges to each parent before services requiring payment can begin. A parenting coordinator cannot increase the parenting coordinator's hourly rate during a term of appointment.

(2) *Adjustment to Allocation of Fees by Parents.* Both parents may agree to a change in the allocation of fees by amending the agreement in writing with the parenting coordinator. Without the parents' agreement, a parenting coordinator cannot reallocate fees based on a change in a parent's financial circumstances.

(3) *Sanctions and Reallocation of Fees.* Where one parent is reasonably believed to be using parenting coordinator services excessively or to harass the other parent, a parenting coordinator or a parent can recommend, as a sanction, an adjustment to the allocation of the parenting coordinator's fees. Any recommendation must be filed with the court in writing and must explain in detail the reason for the recommended fee reallocation. The recommendation must be provided to each parent or counsel, if represented, if filed by the parenting coordinator, and if filed by a parent, to the parenting coordinator and the other parent or counsel, if represented. The non-recommending parent may file an objection to the recommendation within 20 days after the date the written recommendation is filed. If an objection is filed, the court must hold a hearing before reallocating fees.

(g) Confidentiality. Parenting coordination is not a confidential process. Therefore, the communications between the following are not confidential:

(1) each parent and the parenting coordinator;

(2) the child and the parenting coordinator;

(3) the parenting coordinator and other relevant parties to the parenting coordination process; and

(4) the parenting coordinator and the court.

Counsel cannot attend parenting coordinator meetings with their clients unless each parent and the parenting coordinator agree or if ordered by the court. The parenting coordinator can meet with each counsel separately to obtain information relevant to the issue before the parenting coordinator.

(h) Scope of Appointment and Authority. The court order appointing the parenting coordinator must specify the scope of the appointment.

(1) A parenting coordinator's scope of appointment can include:

(A) helping the parents address disputed issues, reduce misunderstandings, clarify priorities, explore possibilities for compromise, develop methods of collaboration in parenting, and comply with legal decision-making authority and parenting time orders;

(B) making decisions regarding implementation, clarification, and minor adjustments to parenting time orders;

(C) making decisions regarding parenting challenges not specified in the parenting plan that the parents are unable to resolve. By way of example, these challenges can include disagreements about: pick-up and drop-off locations, dates and times; holiday scheduling; discipline; health issues; personal care issues; school and extracurricular activities; choice of schools; and managing problematic behaviors;

(D) interviewing and requesting documentation from anyone who has relevant information necessary to resolve a matter currently before the parenting coordinator; and

(E) recommending that the court order the parents or child to participate in ancillary services, to be provided by the court or third parties, including but not limited to physical or psychological examinations or assessments, counseling, and alcohol or drug monitoring and testing.

(2) A parenting coordinator must attempt in a timely manner to facilitate agreement on disputed issues between the parents. If the parents are unable to reach agreement, the parenting coordinator will timely decide any disputed issues within the scope of the parenting coordinator's authority.

(3) A parenting coordinator cannot make a decision that will:

(A) affect child support, spousal maintenance, or the allocation or property or debt;

(B) change legal decision-making authority; or

(C) substantially change parenting time.

(i) Emergency Authority and Procedure. If, based upon the parenting coordinator's personal observation, the parenting coordinator determines that a parent's functioning is impaired and the parent is incapable of fulfilling either the court-ordered legal

decision-making or parenting functions, or the parent's conduct will expose the child to an imminent risk of irreparable harm, a parenting coordinator is authorized to file a motion for temporary orders without notice pursuant to Rule 48. The court must accept the motion for filing even though a petition to modify under Rule 91 has not been filed.

(j) Report. The parenting coordinator's decision on an issue must be written in a form substantially similar to the Parenting Coordinator's Report in Rule 97 of these rules. The parenting coordinator must:

(1) mail or transmit the report to the assigned judge--but not the clerk of the court--not later than five business days after receipt of all information necessary to make a decision; and

(2) mail or transmit a copy of the report to each parent or counsel on the same day it is mailed or transmitted to the court.

(k) Court Action. The court, upon receipt of the parenting coordinator's report, must file the report. If the report contains confidential or private information, it must be filed in a manner that prevents the public from accessing the report, pursuant to Rule 13(D) of these rules. Once the report has been filed, the court can do any of the following:

(1) adopt the decision as an order of the court;

(2) reject the decision and report in whole or in part as outside the scope of the parenting coordinator's authority and affirm all or part of the current court order; or

(3) set a hearing regarding the decision.

The court may use the Order Regarding Parenting Coordinator's Report in Rule 97 of these rules for purposes of this paragraph.

(l) Objection. Provided that the parenting coordinator acted within the scope of authority pursuant to this rule and the appointment order, the parenting coordinator's decision is binding. If a parent believes that the parenting coordinator's decision exceeds the scope of the parenting coordinator's authority, the parent may object to the parenting coordinator's decision by filing a pleading with the court entitled “Objection.” The objection must be filed within 20 days after the date of the filing of the parenting coordinator's report. The objection must explain in detail the reasons why the parent believes the parenting coordinator exceeded the scope of authority and whether a hearing is requested on the parent's objection.

(m) Action on Parent's Objection. If either parent files an objection, any court action will remain in effect pending resolution of the objection.

(n) Complaints about Unethical or Unprofessional Conduct by Parenting Coordinators. Complaints about alleged unethical or unprofessional conduct by the parenting coordinator should be submitted to the parenting coordinator's applicable licensing or regulatory board. If the parenting coordinator is not subject to a licensing or regulatory board, the complaint should be brought to the court's attention.

(o) Immunity. The parenting coordinator has immunity in accordance with Arizona law as to all acts undertaken pursuant to and consistent with the appointment order of the court.

(p) Applicability. No court is required to employ or use parenting coordinators; but in the event the court appoints a parenting coordinator, these rules apply.

(q) Effective date. The rule as it exists on January 1, 2016, applies to any appointment or reappointment of a parenting coordinator that occurs on or after January 1, 2016. All parenting coordinator appointments made prior to January 1, 2016, continue to be governed by the prior version of Rule 74 for the remaining term of that appointment.

COMMITTEE COMMENT [2009]

The 2009 amendment of paragraph J does not preclude a party from filing an objection to the recommendation of the parenting coordinator prior to the court acting on the recommendation.

Rule 74. Parenting Coordinator

(a) Purpose of a Parenting Coordination. Parenting coordination is a child-focused alternative dispute resolution process. The purpose for appointing a parenting coordinator is to protect and sustain safe, healthy, and meaningful parent-child relationships by:

(1) assisting parents with implementing and complying with their legal decision-making and parenting plan orders; and

(2) helping parents timely resolve conflicts that may arise concerning legal decision-making and parenting plans.

(b) Parents' Agreement and Understandings.

(1) ***Appointment's Timing and Conditions.*** The court may appoint a third party as a parenting coordinator in proceedings under A.R.S. Title 25 only after the court has entered a legal decision-making or parenting time order, and only if each parent has agreed to the appointment in writing or orally on the record in open court.

(2) ***Agreement's Terms.*** The agreement must state that both parents:

(A) agree to be bound by decisions made by the parenting coordinator that fall within the scope of the parenting coordinator's authority and that relate to issues submitted to the parenting coordinator for decision;

(B) understand the term (length) of the parenting coordinator's appointment;

(C) agree to release documents that the parenting coordinator determines are necessary for performing the parenting coordinator's services;

(D) understand the method by which the parenting coordinator will be selected or the name of the agreed-upon parenting coordinator;

(E) understand how the parenting coordinator charges for services, including the parenting coordinator's hourly rate;

(F) agree that the parents can afford the parenting coordinator's services; and

(G) understand the manner in which the parenting coordinator's fees will be allocated between the parents.

(3) ***Option to Use Conciliation Court.*** Rather than having a privately-paid parent coordinator, parents may request, or a court may appoint, if available, parenting coordination assistance through the conciliation court. Parents obtaining

parenting coordinator services through the conciliation court must agree to (b)(2)(A) through (C).

(c) Selection of a Parenting Coordinator.

(1) ***Who May Be Appointed.*** The following persons can serve as a parenting coordinator:

(A) an attorney who is licensed to practice law in Arizona;

(B) a psychiatrist who is licensed to practice medicine or osteopathy in Arizona;

(C) a psychologist who is licensed to practice psychology in Arizona;

(D) a person who is licensed to practice independently by the Arizona Board of Behavioral Health Examiners;

(E) professional staff of a court's conciliation services department; or

(F) a person with education, experience, and expertise who is deemed qualified by the court's presiding judge or a designee.

(2) ***Additional Requirements.*** The court can set additional requirements for service as a parenting coordinator.

(3) ***Disqualification from Later Participation in Another Role.*** A person appointed as a parenting coordinator may not serve in any other function or role in the case, except that each parent and the parenting coordinator may agree that a person who is serving or has already served in a legal, treatment, evaluative, or therapeutic role in the case may be appointed as the parenting coordinator.

(d) Term of Service.

(1) ***Generally.*** The parenting coordinator's term will be designated in the appointment order.

(2) ***Initial Term.*** A parenting coordinator's initial term cannot exceed one year, unless both parents and the parenting coordinator agree to a longer term.

(3) ***Reappointment.*** The parenting coordinator cannot be reappointed at the end of the term unless each parent and the parenting coordinator agree to the reappointment in writing or orally on the record in open court. By agreeing to the reappointment, the parents are reaffirming and accepting the agreements and understandings in (b)(2)(A) through (G). The reappointment term cannot be longer than one year unless both parents and the parenting coordinator agree to a longer term.

(4) ***Resignation.*** The parenting coordinator can resign by court order and following notice to each parent.

(5) ***Discharge.*** Both parents can agree to discharge the parenting coordinator. If only one parent wishes to discharge the parenting coordinator, that parent must file a motion with the court establishing good cause for the request. Disagreement with one or more of the parenting coordinator's decisions does not constitute good cause.

(6) ***Replacement of the Parenting Coordinator.*** Both parents can agree in writing or orally on the record in open court to replace the existing parenting coordinator. The agreement to replace the parenting coordinator must also confirm the parents' agreements and understandings in (b)(2)(A) through (G).

(e) Confidentiality.

(1) ***Generally.*** Parenting coordination is not a confidential process. Therefore, the following communications are not confidential:

(A) between each parent and the parenting coordinator;

(B) between the child and the parenting coordinator;

(C) between the parenting coordinator and other relevant parties to the parenting coordination process; and

(D) between the parenting coordinator and the court.

(2) ***Counsel's Participation.*** An attorney for either parent cannot attend parenting coordinator meetings with their clients unless both parents and the parenting coordinator agree, or unless allowed by a court order. However, a parenting coordinator can meet separately with each parent's attorney to obtain information relevant to the issue before the parenting coordinator. [**JWR Note:** The current rule has this limitation. I would leave it to the Task Force to decide whether to keep it.]

(f) Scope of Appointment and Authority.

(1) ***Generally.*** The court appointment order must specify the scope of the parenting coordinator's appointment and the parenting coordinator's authority.

(2) ***Scope of Authority.*** A parenting coordinator's scope of appointment can include:

(A) helping the parents:

(i) address disputed issues;

(ii) reduce misunderstandings;

(iii) clarify priorities;

(iv) explore possibilities for compromise;

(v) develop methods of collaboration in parenting; and

(vi) comply with legal decision-making authority and parenting time orders;

(B) making decisions regarding implementation and clarification of the court's orders, including minor adjustments to parenting time orders;

(C) making decisions regarding parenting challenges not specified in the parenting plan that the parents are unable to resolve, such as disagreements about pick-up and drop-off locations, dates and times of pick-up and drop-off, holiday scheduling, discipline, health issues, personal care issues, school and extracurricular activities, choice of schools, and managing problematic behaviors;

(D) interviewing and requesting documentation from anyone who has relevant information necessary to resolve a matter currently before the parenting coordinator; and

(E) recommending that the court order the parents or their child to participate in ancillary services provided by the court or third parties, including but not limited to physical or psychological examinations or assessments, counseling, and alcohol or drug monitoring and testing.

(3) ***Facilitating Agreements.*** A parenting coordinator must attempt in a timely manner to facilitate agreement on disputed issues between the parents. If the parents are unable to reach agreement, the parenting coordinator will timely decide any disputed issues within the scope of the parenting coordinator's authority.

(4) ***Limits on Authority.*** A parenting coordinator cannot make a decision that will:

(A) affect child support, spousal maintenance, or the allocation or property or debt;

(B) change legal decision-making authority; or

(C) substantially change parenting time.

(g) Emergency Authority and Procedure. If by personal observation the parenting coordinator determines that a parent's functioning is impaired and the parent is incapable of fulfilling either the court-ordered legal decision-making or parenting

functions, or the parent's conduct will expose the child to an imminent risk of irreparable harm, a parenting coordinator may file a motion for temporary orders without notice under Rule 48. The court must consider the motion even if a Rule 91 modification petition is not pending.

(h) Report.

(1) ***Form.*** The parenting coordinator's decision on an issue must be substantially in the form set forth in Rule 97, Form 9 ("Parenting Coordinator's Report").

(2) ***Transmission.*** The parenting coordinator must:

(A) mail or transmit the report to the assigned judge—but not the clerk [alternative: "but not file it"]—no later than 5 ~~business~~ days [**JWR Note:** This adjective is unnecessary because, under the time computation rules, time periods under 11 days don't count intermediate weekends and holidays] after receipt of all information necessary to make a decision; and

(B) mail or transmit a copy of the report to each parent or the parent's attorney on the same day it is mailed or transmitted to the assigned judge.

(i) Court Action.

(1) ***Receipt and Filing.*** The court, upon receipt of the parenting coordinator's report, [Note: this needs to be harmonized with (h)(2)(A), which expressly states that the report is not transmitted to the court clerk; if the assigned judge files the report, the rule should state that.] must file the report. If the report contains confidential or private information, it must be filed in a manner that prevents the public from accessing the report consistent with Rule 13(D).

(2) ***Action.*** Once the report has been filed, the court may:

(A) adopt the decision as an order of the court;

(B) reject the decision and the report entirely or partially as outside the scope of the parenting coordinator's authority, and affirm all or part of the current court order; or

(C) set a hearing regarding the decision.

(3) ***Form of Order.*** For the purposes of acting on a report, the court's order may be in the form set forth in Rule 97, Form 10 ("Order Regarding Parenting Coordinator's Report").

(j) Objection.

(1) ***Binding Nature of the Decision.*** The parenting coordinator's decision is binding if the parenting coordinator acted within the coordinator's authority under this rule and the appointment order.

(2) ***Objection.*** If a parent believes that the parenting coordinator's decision exceeds the scope of the parenting coordinator's authority, the parent may object to the parenting coordinator's decision by filing an objection. The objection must be filed no later than 20 days after the parenting coordinator's report is filed. The objection must explain in detail the reasons why the parent believes the parenting coordinator exceeded the coordinator's authority, and whether the parent is requesting a hearing on the objection.

(3) ***Court Action on an Objection.*** If either parent files an objection, any court action will remain in effect pending resolution of the objection. [Note: Consider including a provision on a hearing regarding an objection.]

(k) Fees.

(1) ***Disclosure of Fees.*** The parenting coordinator must fully disclose all fees and charges to each parent before providing services. A parenting coordinator may not increase the parenting coordinator's hourly rate during a term of appointment.

(2) ***Adjustment to Allocation of Fees.*** Both parents may agree to a change in the allocation of fees by amending their written agreement with the parenting coordinator. Without the parents' agreement, a parenting coordinator may not reallocate fees based on a change in a parent's financial circumstances.

(3) ***Sanctions and Reallocation of Fees.***

(A) *Recommendation.* If reason exists to believe that one parent is using parenting coordinator services excessively or to harass the other parent, a parenting coordinator or a parent may recommend, as a sanction, an adjustment to the allocation of the parenting coordinator's fees. Any recommendation must be filed with the court and must explain the reasons for the recommended fee reallocation.

(B) *Transmission.* The recommendation must be provided to each parent or the parent's attorney if filed by the parenting coordinator, and if filed by a parent, the parent must provide it to the parenting coordinator and the other parent or the other parent's attorney.

(C) *Objection.* A parent may file an objection to the recommendation but must do so no later than 20 days after the recommendation is filed.

(D) *Hearing.* If an objection is filed, the court must hold a hearing before it may [alternative— "before making a decision on"] reallocate fees. [**JWR Note:** Does this mean the court doesn't have to hold a hearing if it rejects the recommendation?]

(l) Immunity. The parenting coordinator has immunity in accordance with Arizona law as to all acts undertaken under, and consistent with, the court's appointment order.

(m) Complaints about Unethical or Unprofessional Conduct by Parenting Coordinators. Complaints about alleged unethical or unprofessional conduct by the parenting coordinator should be submitted to the parenting coordinator's applicable licensing or regulatory board. If the parenting coordinator is not subject to a licensing or regulatory board, the complaint should be brought to the court's attention.

(n) Applicability. No court is required to employ or use a parenting coordinator, but if it does so, these rules apply.

(o) Effective Date. The rule as it exists on January 1, 2016, applies to any appointment or reappointment of a parenting coordinator that occurs on or after January 1, 2016. All parenting coordinator appointments made before January 1, 2016, continue to be governed by the prior version of Rule 74 for the remaining term of that appointment.

COMMITTEE COMMENT [AMENDED 2007]

This rule is based on Maricopa County Local Rule 6.12, Pima County Local Rule 8.11 and Coconino County Local Rule 20. The term "Parenting Coordinator" replaces the terms "special master" and "family court advisor" previously used in Arizona based on a national trend. Further, the Association of Family and Conciliation Courts (AFCC) has promulgated guidelines for the appointment of Parenting Coordinators. The appointment of a Parenting Coordinator is appropriate when parents have ongoing conflicts related to enforcement of legal decision-making and parenting time orders, which without a Parenting Coordinator would result in protracted litigation. The appointment of such persons to assist the court is authorized pursuant to A.R.S. § 25-405, and shall also comply with the requirements of A.R.S. § 25-406. Parenting Coordinators are used throughout the country to assist in the effective resolution of the ongoing conflicts surrounding legal decision-making and parenting time issues. This rule is not intended to transfer the authority and jurisdiction of the superior court to make legal decision-making decisions or substantially modify parenting time.

For purposes of example only, and not by limitation, such short-term, emerging, and time-sensitive situations might be: 1) temporarily changing exchange day, time, or place

due to an immediate need; 2) attendance at or participation in an unexpected special event or occasion by the child or a parent; 3) responsibility for care of a sick child or accompaniment to medical treatment; or 4) another unpredictable and significant need of the child or a parent.

Additional parent information regarding the use of Parenting Coordinators may be found in Form 11, Parent Information Regarding the Use of Parenting Coordinators.

COMMITTEE COMMENT [2009]

The 2009 amendment of paragraph J does not preclude a party from filing an objection to the recommendation of the parenting coordinator prior to the court acting on the recommendation.

Compare Version

Rule 74. Parenting Coordinator

(a) Purpose of a Parenting Coordination. Parenting coordination is a child-focused alternative dispute resolution process. ~~The overall objective of parenting coordination is to assist parents with implementation, compliance, and timely conflict resolution regarding their parenting plan and legal decision-making orders so as~~The purpose for appointing a parenting coordinator is to protect and sustain safe, healthy, and meaningful parent-child relationships~~.~~ by:

(1) ~~**Appointment of a Parenting Coordinator.**~~assisting parents with implementing and complying with their legal decision-making and parenting plan orders; and

(2) helping parents timely resolve conflicts that may arise concerning legal decision-making and parenting plans.

(b) Parents' Agreement and Understandings.

~~(b)~~(1) ***Appointment's Timing and Conditions.*** The court may appoint a third party as a parenting coordinator in proceedings under A.R.S. Title 25~~, A.R.S., at any time~~ only after ~~entry of~~the court has entered a legal decision-making or parenting time order, and only if each parent has agreed to the appointment ~~either by written stipulation~~in writing or orally on the record in open court.

(2) ***Agreement's Terms.*** The ~~stipulation~~agreement must state that both parents:

~~(1) each parent understands how the parenting coordinator bills for services, including~~agree to be bound by decisions made by the parenting ~~coordinator's hourly rate, and~~ coordinator that fall within the ~~parents can afford~~ scope of the parenting ~~coordinator's services;~~

~~(2)~~(A) ~~the manner in which~~coordinator's authority and that relate to issues submitted to the parenting ~~coordinator's fees will be allocated between the parents;~~coordinator for decision;

(B) understand the term (length) of the parenting coordinator's appointment;

(C) agree to release documents that the parenting coordinator determines are necessary for performing the parenting coordinator's services;

~~(3)~~(D) understand the method by which the parenting coordinator will be selected or the name of the agreed-upon parenting coordinator;

~~(4)~~(E) ~~the parents agree to the release of documents~~understand how the parenting coordinator ~~deems necessary to the performance of~~charges for services, including the parenting ~~coordinator's services~~coordinator's hourly rate;

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~~(5) the term of the appointment; and~~

~~(F)~~ agree that the parents ~~agree to be bound by decisions made by~~can afford the parenting ~~coordinator that fall within the scope of~~coordinator's services; and

~~(6)~~(G) understand the manner in which the parenting ~~coordinator's authority and relate to issues submitted to the parenting coordinator for decision.~~coordinator's fees will be allocated between the parents.

(3) ~~Nothing in this rule is intended to prevent~~***Option to Use Conciliation Court.*** Rather than having a privately-paid parent coordinator, parents ~~from requesting~~may request, or a court ~~from appointing~~may appoint, if available, parenting coordination assistance through the ~~court's~~ conciliation court ~~services, if available.~~ Parents obtaining parenting coordinator services through the ~~court's~~ conciliation court ~~services~~ must agree to ~~subdivisions 4-6 above.~~(b)(2)(A) through (C).

~~(c) Selection of a Parenting Coordinator. A parenting coordinator appointed by the court must qualify as a parenting coordinator under paragraph D. A person appointed as a parenting coordinator cannot serve in any other function or role in the case, except that each parent and the parenting coordinator may agree that a person who is serving or has already served in a legal, treatment, evaluative, or therapeutic role in the case can be appointed as the parenting coordinator.~~

~~(c) Persons Who Can Serve as a Parenting Coordinator.~~Selection of a Parenting Coordinator.

~~(d)~~(1) ***Who May Be Appointed.*** The following persons can serve as a parenting coordinator:

~~(1)~~(A) an attorney who is licensed to practice law in Arizona;

~~(2)~~(B) a psychiatrist who is licensed to practice medicine or osteopathy in Arizona;

~~(3)~~(C) a psychologist who is licensed to practice psychology in Arizona;

~~(4)~~(D) a person who is licensed to practice independently by the Arizona Board of Behavioral Health Examiners;

~~(5)~~(E) professional staff of a ~~court's~~court's conciliation services department; or

~~(6)~~(F) a person with education, experience, and expertise who is deemed qualified by the ~~court's~~court's presiding judge or a designee.

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(2) ***Additional Requirements.*** The court can set additional requirements for service as a parenting coordinator.

(3) ***Disqualification from Later Participation in Another Role.*** A person appointed as a parenting coordinator may not serve in any other function or role in the case, except that each parent and the parenting coordinator may agree that a person who is serving or has already served in a legal, treatment, evaluative, or therapeutic role in the case may be appointed as the parenting coordinator.

(d) **Term of Service.**

~~(e)~~(1) ***Generally.*** The parenting coordinator's term ~~of the parenting coordinator~~ will be designated in the ~~order of~~ appointment order.

~~(1)~~(2) ***Initial Term.*** A parenting ~~coordinator's~~coordinator's initial term cannot exceed one year, unless ~~each parent~~both parents and the parenting coordinator agree to a longer term.

~~(2)~~(3) ***Reappointment.*** The parenting coordinator cannot be reappointed at the end of the term unless each parent and the parenting coordinator agree to the reappointment in writing or orally on the record in open court. By agreeing to the reappointment, ~~each parent is acknowledging~~ the ~~parent's understanding~~parents are reaffirming and ~~acceptance of subdivisions 1-6~~accepting the agreements and understandings in ~~paragraph B, above.~~(b)(2)(A) through (G). The reappointment term cannot ~~exceed~~be longer than one year unless ~~each parent~~both parents and the parenting coordinator agree to a longer term.

~~(3) *Replacement of the Parenting Coordinator.* Both parents can agree to replace the existing parenting coordinator by stipulating to the replacement in writing or orally on the record in open court. The stipulation that replaces the parenting coordinator must also contain the stipulations in subdivisions 1-6 in paragraph B, above.~~

(4) ***Resignation.*** The parenting coordinator can resign ~~upon~~by court order and following notice to each parent ~~and order of the court~~.

(5) ***Discharge.*** Both parents can ~~jointly~~ agree to discharge the parenting coordinator ~~during the term of appointment~~. If only one parent wishes to discharge the parenting coordinator, that parent must file a motion with the court ~~that establishes~~establishing good cause for the ~~requested relief. Disagreeing~~request. Disagreement with one or more of the parenting ~~coordinator's~~coordinator's decisions does not constitute good cause ~~for discharging the parenting coordinator~~.

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~~(f)~~~~(a) Fees.~~

~~(1) *Disclosure*~~***Replacement*** ***of*** ~~*Fees.* The~~ ***the Parenting Coordinator.*** Both parents can agree in writing or orally on the record in open court to replace the existing parenting coordinator~~ must fully disclose all fees and charges to each parent before services requiring payment can begin. A parenting coordinator cannot increase the parenting coordinator's hourly rate during a term of appointment.~~

~~(2)~~(6) ~~*Adjustment to Allocation of Fees by Parents.* Both parents may agree to a change in the allocation of fees by amending the~~ . The agreement ~~in writing with~~to replace the parenting coordinator~~. Without~~ must also confirm the ~~parents' agreement, a parenting coordinator cannot reallocate fees based on a change~~parents' agreements and understandings in ~~a parent's financial circumstances.~~(b)(2)(A) through (G).

~~(3) ***Sanctions and Reallocation of Fees.*** Where one parent is reasonably believed to be using parenting coordinator services excessively or to harass the other parent, a parenting coordinator or a parent can recommend, as a sanction, an adjustment to the allocation of the parenting coordinator's fees. Any recommendation must be filed with the court in writing and must explain in detail the reason for the recommended fee reallocation. The recommendation must be provided to each parent or counsel, if represented, if filed by the parenting coordinator, and if filed by a parent, to the parenting coordinator and the other parent or counsel, if represented. The non-recommending parent may file an objection to the recommendation within 20 days after the date the written recommendation is filed. If an objection is filed, the court must hold a hearing before reallocating fees.~~

(e) **Confidentiality.**

~~(g)~~(1) ***Generally.*** Parenting coordination is not a confidential process. Therefore, the following communications ~~between the following~~ are not confidential:

~~(1)~~(A) between each parent and the parenting coordinator;

~~(2)~~(B) between the child and the parenting coordinator;

~~(3)~~(C) between the parenting coordinator and other relevant parties to the parenting coordination process; and

~~(4)~~(D) between the parenting coordinator and the court.

(2) ~~Counsel~~ ***Counsel's Participation.*** An attorney for either parent cannot attend parenting coordinator meetings with their clients unless ~~each parent~~both parents and the parenting coordinator agree, or ~~if ordered~~unless allowed by ~~the~~a court.

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~~The~~ order. However, a parenting coordinator can meet ~~with each counsel~~ separately with each parent's attorney to obtain information relevant to the issue before the parenting coordinator. [**JWR Note:** The current rule has this limitation. I would leave it to the Task Force to decide whether to keep it.]

(f) Scope of Appointment and Authority.

~~(h)~~**(1)** ***Generally.*** The court appointment order ~~appointing the parenting coordinator~~ must specify the scope of the parenting coordinator's appointment and the parenting coordinator's authority.

~~(1)~~**(2)** ***Scope of Authority.*** A parenting ~~coordinator's~~coordinator's scope of appointment can include:

(A) helping the parents:

(i) address disputed issues~~,~~;

(ii) reduce misunderstandings~~,~~;

(iii) clarify priorities~~,~~;

(iv) explore possibilities for compromise~~,~~;

(v) develop methods of collaboration in parenting~~,~~; and

~~(A)~~**(vi)** comply with legal decision-making authority and parenting time orders;

(B) making decisions regarding implementation~~,~~ and clarification~~ and~~ of the court's orders, including minor adjustments to parenting time orders;

(C) making decisions regarding parenting challenges not specified in the parenting plan that the parents are unable to resolve~~. By way of example, these challenges can include~~, such as disagreements about~~:~~ pick-up and drop-off locations, dates and times~~;~~ of pick-up and drop-off, holiday scheduling~~;~~ discipline~~;~~ health issues~~;~~ personal care issues~~;~~ school and extracurricular activities~~;~~ choice of schools~~;~~ and managing problematic behaviors;

(D) interviewing and requesting documentation from anyone who has relevant information necessary to resolve a matter currently before the parenting coordinator; and

(E) recommending that the court order the parents or their child to participate in ancillary services~~, to be~~ provided by the court or third parties, including but not limited to physical or psychological examinations or assessments, counseling, and alcohol or drug monitoring and testing.

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~~(2)~~(3) ***Facilitating Agreements.*** A parenting coordinator must attempt in a timely manner to facilitate agreement on disputed issues between the parents. If the parents are unable to reach agreement, the parenting coordinator will timely decide any disputed issues within the scope of the parenting ~~coordinator's~~coordinator's authority.

~~(3)~~(4) ***Limits on Authority.*** A parenting coordinator cannot make a decision that will:

(A) affect child support, spousal maintenance, or the allocation or property or debt;

(B) change legal decision-making authority; or

(C) substantially change parenting time.

~~(i)~~(g) **Emergency Authority and Procedure.** If~~, based upon the parenting coordinator's~~ by personal observation~~,~~ the parenting coordinator determines that a ~~parent's~~parent's functioning is impaired and the parent is incapable of fulfilling either the court-ordered legal decision-making or parenting functions, or the ~~parent's~~parent's conduct will expose the child to an imminent risk of irreparable harm, a parenting coordinator ~~is authorized to~~may file a motion for temporary orders without notice ~~pursuant to~~under Rule 48. The court must ~~accept~~consider the motion ~~for filing~~ even ~~though~~if a Rule 91 modification petition ~~to modify under Rule 91 has~~ is not ~~been filed~~pending.

(h) **Report.**

(1) ***Form.*** The parenting ~~coordinator's~~coordinator's decision on an issue must be ~~written in a form~~ substantially ~~similar to the~~ in the form set forth in Rule 97, Form 9 ("Parenting ~~Coordinator's~~Coordinator's Report ~~in Rule 97 of these rules.~~").

~~(j)~~(2) ***Transmission.*** The parenting coordinator must:

~~(1)~~(A) mail or transmit the report to the assigned judge—but not the clerk ~~of the court~~—[alternative: "but not file it"]—no later than ~~five~~5 ~~business~~ days **[JWR Note:** This adjective is unnecessary because, under the time computation rules, time periods under 11 days don't count intermediate weekends and holidays] after receipt of all information necessary to make a decision; and

~~(2)~~(B) mail or transmit a copy of the report to each parent or ~~counsel~~the parent's attorney on the same day it is mailed or transmitted to the ~~court~~assigned judge.

(i) **Court Action.**

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~~(k)~~(1) ***Receipt and Filing.*** The court, upon receipt of the parenting ~~coordinator's~~coordinator's report, [Note: this needs to be harmonized with (h)(2)(A), which expressly states that the report is not transmitted to the court clerk; if the assigned judge files the report, the rule should state that.] must file the report. If the report contains confidential or private information, it must be filed in a manner that prevents the public from accessing the report~~, pursuant to Rule 13(D) of these rules. Once the report has been filed, the court can do any of the following:~~ consistent with Rule 13(D).

(2) ***Action.*** Once the report has been filed, the court may:

~~(1)~~(A) adopt the decision as an order of the court;

~~(2)~~(B) reject the decision and the report ~~in whole~~entirely or ~~in part~~partially as outside the scope of the parenting ~~coordinator's~~coordinator's authority and affirm all or part of the current court order; or

~~(3)~~(C) set a hearing regarding the decision.

(3) ~~The court may use~~***Form of Order.*** For the purposes of acting on a report, the court's order may be in the form set forth in Rule 97, Form 10 ("Order Regarding Parenting ~~Coordinator's~~Coordinator's Report ~~in Rule 97 of these rules for purposes of this paragraph.~~").

(j) **Objection.** ~~Provided that~~

(1) ***Binding Nature of the Decision.*** The parenting coordinator's decision is binding if the parenting coordinator acted within the ~~scope of~~ coordinator's authority ~~pursuant to~~under this rule and the appointment order~~, the parenting coordinator's decision is binding.~~.

~~(l)~~(2) ***Objection.*** If a parent believes that the parenting ~~coordinator's~~coordinator's decision exceeds the scope of the parenting ~~coordinator's~~coordinator's authority, the parent may object to the parenting ~~coordinator's~~coordinator's decision by filing ~~a pleading with the court entitled "Objection."~~an objection. The objection must be filed ~~within~~no later than 20 days after the ~~date of the filing of the~~ parenting ~~coordinator's~~coordinator's report is filed. The objection must explain in detail the reasons why the parent believes the parenting coordinator exceeded the ~~scope of~~coordinator's authority and whether the parent is requesting a hearing ~~is requested~~ on the ~~parent's~~ objection.

~~(m)~~(3) ***Court Action on ~~Parent's~~an Objection.*** If either parent files an objection, any court action will remain in effect pending resolution of the objection. [Note: Consider including a provision on a hearing regarding an objection.]

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(k) Fees.

(1) ***Disclosure of Fees.*** The parenting coordinator must fully disclose all fees and charges to each parent before providing services. A parenting coordinator may not increase the parenting coordinator's hourly rate during a term of appointment.

(2) ***Adjustment to Allocation of Fees.*** Both parents may agree to a change in the allocation of fees by amending their written agreement with the parenting coordinator. Without the parents' agreement, a parenting coordinator may not reallocate fees based on a change in a parent's financial circumstances.

(3) ***Sanctions and Reallocation of Fees.***

(A) *Recommendation.* If reason exists to believe that one parent is using parenting coordinator services excessively or to harass the other parent, a parenting coordinator or a parent may recommend, as a sanction, an adjustment to the allocation of the parenting coordinator's fees. Any recommendation must be filed with the court and must explain the reasons for the recommended fee reallocation.

(B) *Transmission.* The recommendation must be provided to each parent or the parent's attorney if filed by the parenting coordinator, and if filed by a parent, the parent must provide it to the parenting coordinator and the other parent or the other parent's attorney.

(C) *Objection.* A parent may file an objection to the recommendation but must do so no later than 20 days after the recommendation is filed.

(D) *Hearing.* If an objection is filed, the court must hold a hearing before it may [alternative—"before making a decision on"] reallocate fees. [**JWR Note:** Does this mean the court doesn't have to hold a hearing if it rejects the recommendation?]

(l) Immunity. The parenting coordinator has immunity in accordance with Arizona law as to all acts undertaken under, and consistent with, the court's appointment order.

~~(n)~~**(m) Complaints about Unethical or Unprofessional Conduct by Parenting Coordinators.** Complaints about alleged unethical or unprofessional conduct by the parenting coordinator should be submitted to the parenting ~~coordinator's~~coordinator's applicable licensing or regulatory board. If the parenting coordinator is not subject to a licensing or regulatory board, the complaint should be brought to the ~~court's~~court's attention.

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~~(o) **Immunity.** The parenting coordinator has immunity in accordance with Arizona law as to all acts undertaken pursuant to and consistent with the appointment order of the court.~~

~~(p)~~(n) **Applicability.** No court is required to employ or use a parenting coordinator~~s~~, but ~~in the event the court appoints a parenting coordinator~~if it does so, these rules apply.

~~(q)~~(o) **Effective ~~date.~~Date.** The rule as it exists on January 1, 2016, applies to any appointment or reappointment of a parenting coordinator that occurs on or after January 1, 2016. All parenting coordinator appointments made ~~prior to~~before January 1, 2016, continue to be governed by the prior version of Rule 74 for the remaining term of that appointment.

COMMITTEE COMMENT [AMENDED 2007]

This rule is based on Maricopa County Local Rule 6.12, Pima County Local Rule 8.11 and Coconino County Local Rule 20. The term "Parenting Coordinator" replaces the terms "special master" and "family court advisor" previously used in Arizona based on a national trend. Further, the Association of Family and Conciliation Courts (AFCC) has promulgated guidelines for the appointment of Parenting Coordinators. The appointment of a Parenting Coordinator is appropriate when parents have ongoing conflicts related to enforcement of legal decision-making and parenting time orders, which without a Parenting Coordinator would result in protracted litigation. The appointment of such persons to assist the court is authorized pursuant to A.R.S. § 25-405, and shall also comply with the requirements of A.R.S. § 25-406. Parenting Coordinators are used throughout the country to assist in the effective resolution of the ongoing conflicts surrounding legal decision-making and parenting time issues. This rule is not intended to transfer the authority and jurisdiction of the superior court to make legal decision-making decisions or substantially modify parenting time.

For purposes of example only, and not by limitation, such short-term, emerging, and time-sensitive situations might be: 1) temporarily changing exchange day, time, or place due to an immediate need; 2) attendance at or participation in an unexpected special event or occasion by the child or a parent; 3) responsibility for care of a sick child or accompaniment to medical treatment; or 4) another unpredictable and significant need of the child or a parent.

Additional parent information regarding the use of Parenting Coordinators may be found in Form 11, Parent Information Regarding the Use of Parenting Coordinators.

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COMMITTEE COMMENT [2009]

The 2009 amendment of paragraph J does not preclude a party from filing an objection to the recommendation of the parenting coordinator prior to the court acting on the recommendation.

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Rule 75. ~~Expedited Processing Plans~~ [Reserved]

~~A county may establish, by local rule or administrative order, a plan [procedures?] to expedite the processing of petitions under A.R.S. §§ 25-326 and 25-412.~~

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Rule 75. [Reserved]

Rule 78. Judgment; Attorney Fees, Costs, and Expenses

(a) Definitions; Form.

(1) "*Judgment*" as used in these rules includes a decree and an order from which an appeal lies. A judgment ~~shall~~ must not contain a recital of pleadings or the record of prior proceedings, but may contain findings by a family law master appointed by the court.

~~A.~~**(2)** ~~*For purposes of this rule, a* "*D*~~*decision*" as used in this rule is a written order, ruling, or minute entry that adjudicates at least one claim or defense.

~~B.~~**(b) Judgment upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 78(b). ~~of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.~~ If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and ~~may be revised~~ is subject to revision at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. ~~In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.~~ For purposes of this ~~sub~~section, a claim for attorney~~s~~' fees ~~may be~~is considered a separate claim from the related judgment regarding the merits of ~~a cause~~ the action.

~~C.~~**(c) Entry of Judgment after Death of Party.** Judgment may be entered after the death of a party upon a decision or upon an issue of fact rendered in the party's lifetime, except that an order dissolving the marriage may not be entered after the death of either party.

(d) Attorney~~s~~' Fees, Costs, and Expenses.

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(1) *Asserting a C~~C~~laim~~s~~ for Attorney~~s'~~ Fees, Costs, and Expenses*. A claim for attorney~~s'~~ fees, costs, and expenses ~~initially shall~~ must be made in the pleadings~~,~~ ~~pretrial statement,~~ or by motion filed ~~prior to~~before trial or a post-decree evidentiary hearing. A claim for attorney fees, costs, and expenses must be included in any required pretrial statement.

~~2. Costs and expenses also shall be claimed by an itemized statement.~~

~~3. *Time of Determination.* Except as to temporary awards of attorneys' fees and costs, when attorneys' fees are claimed, the determination as to the claimed attorneys' fees shall be included with a decision on the merits of the case or as otherwise ordered by the court~~

(2) ~~*Method of* Establishing~~ *a Claim*. ~~A claim for attorneys' fees, costs, and expenses~~The claim must be supported ~~shall be supported~~ by an itemized affidavit~~,~~ or exhibits submitted as directed by the court,~~,~~ or, ~~at~~ in the court's discretion ~~of the court~~, by testimony.

~~If the motion is contested, opposing parties may respond to the motion and a hearing may be granted in the discretion of the court. In addition, the court may refer issues relating to the value of services to a family law master under Rule 72.~~

(3) *Time of Determination.* ~~Except as to temporary awards of attorneys' fees and costs, when attorneys' fees are claimed, t~~The determination ~~as to the claimed~~of attorney~~s'~~ fees, costs, and expenses ~~shall~~must be included in the judgment ~~with a decision on the merits of the case~~ or as otherwise ordered by the court. If a party ~~requested~~ asserts a claim for attorney ~~'s~~ fees, costs, and expenses ~~pursuant to~~under Rule 78(~~f~~d)(1), ~~and a decision adjudicates all claims and liabilities of all of the parties~~ and a judgment is ~~to be~~ entered under Rule ~~78(c)~~ 81~~except~~ that omits ~~attorney's fees,~~ a ruling on the claim, the claim is deemed denied unless the party files a~~ny~~ Rule 83 ~~motion for attorney's fees must be filed~~motion within 15 days after ~~the decision is filed~~entry of the judgment.~~, or by such other date as the court may order, or the request is deemed denied.~~

~~4.~~

~~0. *Scope*. The provisions of subdivisions (1) through (3) do not apply to claims for fees, costs, and expenses as sanctions pursuant to statute or other rule, or to causes in which the substantive law governing the action provides for the recovery of such fees, costs, and expenses as an element of damages to be proved at trial. [note - KB - I am not sure on this statement]~~

~~E.~~**(e) Offers of Judgment Not Applicable.** The procedure governing offers of judgment, authorized in civil actions under Ariz. R. Civ. Proc. 68, ~~shall~~ does not apply in any ~~legal matter~~ action under Title 25 that is subject to these Rules.

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Rule 78. Judgment; Attorney Fees, Costs, and Expenses

(a) Definitions; Form.

(1) *"Judgment"* as used in these rules includes a decree and an order from which an appeal lies. A judgment must not contain a recital of pleadings or the record of prior proceedings, but may contain findings by a family law master appointed by the court.

(2) *"Decision"* as used in this rule is a written order, ruling, or minute entry that adjudicates at least one claim or defense.

(b) Judgment upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 78(b). If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and is subject to revision at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. For purposes of this section, a claim for attorney fees is considered a separate claim from the related judgment regarding the merits of the action.

(c) Entry of Judgment after Death of Party. Judgment may be entered after the death of a party upon a decision or upon an issue of fact rendered in the party's lifetime, except that an order dissolving the marriage may not be entered after the death of either party.

(d) Attorney Fees, Costs, and Expenses.

(1) *Asserting a Claim for Attorney Fees, Costs, and Expenses*. A claim for attorney fees, costs, and expenses must be made in the pleadings or by motion filed before trial or a post-decree evidentiary hearing. A claim for attorney fees, costs, and expenses must be included in any required pretrial statement.

(2) *Establishing a Claim.* The claim must be supported by an itemized affidavit or exhibits submitted as directed by the court, or, in the court's discretion, by testimony.

(3) *Time of Determination*. The determination of attorney fees, costs, and expenses must be included in the judgment or as otherwise ordered by the court. If a party asserts a claim for attorney fees, costs, and expenses under Rule 78(d)(1), and a judgment is entered under Rule 81 that omits a ruling on the claim, the claim is deemed denied unless the party files a Rule 83 motion within 15 days after entry of the judgment.

(e) Offers of Judgment Not Applicable. The procedure governing offers of judgment, authorized in civil actions under Ariz. R. Civ. Proc. 68, does not apply in any action under Title 25 that is subject to these Rules.

Rule 92. Civil Contempt and Sanctions for Non-Compliance with a Court Order

(a) Applicability. This rule governs civil contempt proceedings in family law cases. Its procedures and sanctions are in addition to the procedures and sanctions for a child support arrest warrant under A.R.S. §§ 25-681 et. seq.

(1) ***Civil Contempt.*** The court may use civil contempt sanctions under this rule only for compelling compliance with a court order or for compensating a party for losses because of a contemnor's failure to comply with a court order.

(2) ***Criminal Contempt.*** Contempt sanctions that punish an offender, or which vindicate the authority of the court, are criminal in nature and are not governed by this rule.

(b) Petition, Service, and Notice.

(1) ***Petition.*** A party begins a civil contempt proceeding by filing a petition that recites the essential facts alleged to be contemptuous. The petition must comply with this rule and Rules 91(~~A~~b), (c), (e), (1), (2), (3), (J) and (K). and (h)

(2) ***Service.*** The civil contempt petition and ~~order to show cause or~~ order to appear must be personally served on the alleged contemnor as provided in Rules 40(C), (E) or (F), and 41(C)(1). [check cross-references]

(3) ***Notice.*** The court may not make a finding of civil contempt without affording notice to the alleged contemnor and without providing the alleged contemnor an opportunity to be heard.

(c) ~~Order to Show Cause or~~ Order to Appear. The ~~order to show cause or~~ order to appear must specify the date, time, and place of the hearing, and must contain the following notice using substantially the following language:

> Failure to appear at the hearing may result in the court issuing a child support or civil ~~arrest~~ warrant for your arrest~~, or where applicable, a child support arrest warrant, for your arrest~~. If you are arrested, you may be held in jail for up to 24 hours before you see a judge.

(d) Hearing. At the hearing on the petition, the court must make an express finding whether the alleged contemnor had notice of the petition and ~~order to show cause or~~ order to appear. The court also must also determine whether the party who filed the petition has established that:

(1) the court entered a prior order;

(2) the alleged contemnor had notice of the prior order; and

(3) the alleged contemnor ~~has willfully~~ failed to comply with the order.

(e) Order and Sanctions. [ADD? The contemnor may show that the failure to comply with the court order was not willful.] After hearing the testimony and evidence, the court must enter a written order granting or denying the petition for contempt. An order finding the alleged contemnor in contempt must include the following:

(1) a recital of facts on which the contempt finding is based; and

(2) if the court finds it appropriate, a statement of appropriate sanctions for obtaining the contemnor's compliance with the order, including incarceration, seizure of property, attorney's fees, costs, compensatory or coercive fines, parenting time to make-up for time missed due to the contemnor, parent education classes, job services, and any other coercive sanction or relief permitted by law, provided the order includes a purge provision under (f).

(f) Purge.

(1) ***Generally.*** If the court orders incarceration, a fine, or any other sanction for failure to comply with a court order, the order must set conditions for the contemnor to purge the contempt based on the contemnor's present ability to comply.

(2) ***Ability to Comply.*** The court must include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and that finding's factual basis. The court may grant the contemnor a reasonable time to comply with the purge conditions.

(3) ***Noncompliance.*** If the court orders incarceration but defers incarceration for more than 24 hours to allow the contemnor a reasonable time to comply with the purge conditions, and if the contemnor fails to comply within the time provided, the ~~petitioner~~ other party may file an affidavit of noncompliance. Upon receipt of the affidavit or on its own, ~~The~~ the court may ~~then~~ issue a child support or civil arrest warrant ~~warrant~~. The contemnor must be brought before the court within 24 hours of arrest for a determination of whether the contemnor continues to have the present ability to comply with the purge.

~~(g)~~ **Review Hearings for an Incarcerated Contemnor.** If the court incarcerates a civil contemnor after a hearing, the court must hold a review hearing at least every 35 days while the contemnor is incarcerated. At that hearing, the court must determine if the contemnor has been able to comply with the purge condition or the amount of release payment, and if not, it must review the contemnor's present ability to comply. The court must continue or modify its orders according~~ly.~~

Commented [MPJ1]: The rule refers to the movant proving that the alleged contemnor "willfully failed to comply with the order." I think that incorrectly states the burden of production and persuasion for contempt. Simply deleting "has willfully" probably does it.

The civil contempt statute reads:

> Contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, and contempts committed by failure to obey a lawful writ, process, order, judgment of the court, and all other contempts not specifically embraced within this article may be punished in conformity to the practice and usage of the common law.

A.R.S. § 12-864.

No mention of willfulness there. In contrast, criminal contempt requires willfulness. A.R.S. § 12-861; Ariz. R. Crim. P. 33.1. That difference suggests that civil contempt does not require willfulness. That follows the general approach in federal courts, which also follow the common law on this topic. *E.g.*, *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004) ("It need not be established that the violation was willful."); *Perry v. O'Donnell*, 759 F.2d 702, 705 (9th Cir. 1985) ("civil contempt may be established even though the failure to comply with the court order was unintentional."). "A court may not impose punishment in a civil contempt proceeding when it is *clearly established* that the alleged contemnor is *unable to comply* with the terms of the order." *Turner v. Rogers*, 564 U.S. 431, 442 (2011) (addressing civil contempt for failing to pay child support) (emphasis added and quotations omitted). It seems that the alleged contemnor is the party who bears the burden of proving an inability to comply; it isn't the movant's burden to prove that the contemnor willfully failed to comply.

(g)

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Rule 92. Civil Contempt and Sanctions for Non-Compliance with a Court Order

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(2) ***Criminal Contempt.*** Contempt sanctions that punish an offender, or which vindicate the authority of the court, are criminal in nature and are not governed by this rule.

(b) Petition, Service, and Notice.

(1) ***Petition.*** A party begins a civil contempt proceeding by filing a petition that recites the essential facts alleged to be contemptuous. The petition must comply with this rule and Rules 91(b), (c), (e), and (h)

(2) ***Service.*** The civil contempt petition and order to appear must be personally served on the alleged contemnor as provided in Rules 40(C), (E) or (F), and 41(C)(1). [check cross-references]

(3) ***Notice.*** The court may not make a finding of civil contempt without affording notice to the alleged contemnor and without providing the alleged contemnor an opportunity to be heard.

(c) Order to Appear. The order to appear must specify the date, time, and place of the hearing, and must contain the following notice using substantially the following language:

> Failure to appear at the hearing may result in the court issuing a child support or civil warrant for your arrest. If you are arrested, you may be held in jail for up to 24 hours before you see a judge.

(d) Hearing. At the hearing on the petition, the court must make an express finding whether the alleged contemnor had notice of the petition and order to appear. The court also must also determine whether the party who filed the petition has established that:

(1) the court entered a prior order;

(2) the alleged contemnor had notice of the prior order; and

(3) the alleged contemnor failed to comply with the order.

(e) Order and Sanctions. [ADD? The contemnor may show that the failure to comply with the court order was not willful.] After hearing the testimony and evidence, the court must enter a written order granting or denying the petition for contempt. An order finding the alleged contemnor in contempt must include the following:

(1) a recital of facts on which the contempt finding is based; and

(2) if the court finds it appropriate, a statement of appropriate sanctions for obtaining the contemnor's compliance with the order, including incarceration, seizure of property, attorney's fees, costs, compensatory or coercive fines, parenting time to make-up for time missed due to the contemnor, parent education classes, job services, and any other coercive sanction or relief permitted by law, provided the order includes a purge provision under (f).

(f) Purge.

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(2) ***Ability to Comply.*** The court must include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and that finding's factual basis. The court may grant the contemnor a reasonable time to comply with the purge conditions.

(3) ***Noncompliance.*** If the court orders incarceration but defers incarceration for more than 24 hours to allow the contemnor a reasonable time to comply with the purge conditions, and if the contemnor fails to comply within the time provided, the other party may file an affidavit of noncompliance. Upon receipt of the affidavit or on its own, the court may issue a child support or civil arrest warrant. The contemnor must be brought before the court within 24 hours of arrest for a determination of whether the contemnor continues to have the present ability to comply with the purge.

(g) Review Hearings for an Incarcerated Contemnor. If the court incarcerates a civil contemnor after a hearing, the court must hold a review hearing at least every 35 days while the contemnor is incarcerated. At that hearing, the court must determine if the contemnor has been able to comply with the purge condition or the amount of release payment, and if not, it must review the contemnor's present ability to comply. The court must continue or modify its orders according

Rule 95. Other Family Law Services and Resources

(a) Generally. In addition to services described in other rules, the court in a family law case may consider the services set forth in this rule, if available.

(b) ~~Private~~ Mental Health Services. ~~In addition to conciliation services,[necessary?]~~ The court may order parties to engage in ~~private~~ mental health services, including counseling~~, custody evaluations, mental health evaluations, Parenting~~ Coordinator ~~services,~~ ~~therapeutic supervision of parenting time,~~ and ~~other~~ therapeutic interventions. ~~[**Note:** In light of Rule 74, the reference to Parenting Coordinator services appears to be redundant. And therapeutic supervision appears redundant in light of section (e) below.]~~ The court must determine on the record whether the parties have the ability to pay for ~~the~~ private services.

(c) Substance Abuse Services. In a case involving legal decision-making or parenting time, the court may order substance abuse screening and random testing of a party if there is an allegation or showing that the party has abused alcohol or drugs, including prescription medication. The court must designate the frequency of testing and determine which party is responsible for paying for screening and testing services.

(d) Parent Education. The court must order the parties to engage in parent education as required by Arizona law. The court also may order supplemental or additional education in appropriate cases, such as parenting skills classes and parental conflict resolution classes.

(e) Supervised ~~Services~~Exchanges. The court ~~must take reasonable measures to protect the parties and their children from harm, including~~ may order supervised exchanges of parenting time~~, supervised parenting time, and therapeutic supervised parenting time~~ to protect the parties or the children from harm.

(f) Domestic Violence Services. To further the court's goals of preventing and protecting parties and children from domestic violence, the court may utilize family violence prevention services, such as family violence prevention centers and victim advocacy services. ~~If the court finds evidence of domestic violence in a case, it~~ ~~i~~In appropriate ~~cases~~cases, the court may refer parties ~~to appropriate~~~~for~~to services for victims and batterers.

~~**(g) Domestic Violence Prevention.** If the court finds evidence that a party has committed domestic violence or may commit domestic violence in the future, the court may order the party to attend a Batterer Intervention and Prevention Program approved by the Arizona Department of Health Services. A list of providers is available at the Arizona Department of Health Services website. [**Note:** The first~~

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~~sentence of (g) is redundant to (f). The second sentence of (g) might be in a comment, but it is not a "rule."]~~

~~(h)~~(g) **Real Estate Special Commissioner.** In accordance with local rule or procedures, the court may appoint a real estate special commissioner to assist the parties in dividing and disposing of community real property ~~if they are unable to agree on those issues~~.

~~(i) **Title IV-D Services.** Title IV-D Services may be provided in a Title IV-D case. A person may apply for Title IV-D Services at the Division of Child Support Services (DCSS) of the Department of Economic Security. [**Note:** The second sentence is not a "rule."]~~

(h) **Department of Child Safety.** The court may request or order the services of the Department of Child Safety if the court believes that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

~~(j)~~(i) **Note:** Consider adding a provision regarding appointment of an expert on QDROs, similar to section (g) above.

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Rule 95. Other Family Law Services and Resources

(a) Generally. In addition to services described in other rules, the court in a family law case may consider the services set forth in this rule, if available.

(b) Mental Health Services. The court may order parties to engage in mental health services, including counseling and therapeutic interventions. The court must determine on the record whether the parties have the ability to pay for private services.

(c) Substance Abuse Services. In a case involving legal decision-making or parenting time, the court may order substance abuse screening and random testing of a party if there is an allegation or showing that the party has abused alcohol or drugs, including prescription medication. The court must designate the frequency of testing and determine which party is responsible for paying for screening and testing services.

(d) Parent Education. The court must order the parties to engage in parent education as required by Arizona law. The court also may order supplemental or additional education in appropriate cases, such as parenting skills classes and parental conflict resolution classes.

(e) Supervised Exchanges. The court may order supervised exchanges of parenting time to protect the parties or the children from harm.

(f) Domestic Violence Services. To further the court's goals of preventing and protecting parties and children from domestic violence, the court may utilize family violence prevention services, such as family violence prevention centers and victim advocacy services. In appropriate cases, the court may refer parties to services for victims and batterers.

(g) Real Estate Special Commissioner. In accordance with local rule or procedures, the court may appoint a real estate special commissioner to assist the parties in dividing and disposing of community real property.

(h) Department of Child Safety. The court may request or order the services of the Department of Child Safety if the court believes that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

(i) **Note:** Consider adding a provision regarding appointment of an expert on QDROs, similar to section (g) above.

Rule 97. Family Law Forms

(a) Generally. The forms listed in this rule are recommended and meet the requirements of these rules.

(b) ~~**"Substantially in the Form."**~~**Substantial Compliance.** ~~The phase "substantially in the form," w~~When ~~used in~~ these rules ~~in referring~~refer to a recommended form, ~~means that~~ a party may delete content of a recommended form if the form requests particular information that does not apply to the party's case. A party who deletes content in a recommended form, or who fails to complete a portion of a recommended form, represents to the court and to other parties that the question or item does not apply.

(c) Availability. These recommended forms and other family law forms are available at court self-service centers, or at the Supreme Court's website. ~~:~~ ~~http://supreme.state.az.us/selfserv/ARFLP_forms.htm~~

(d) Modification. The Supreme Court may modify these forms by administrative order.

Note: The link in section (c) is broken.

The correct link is http://www.azcourts.gov/selfservicecenter/Self-Service-Forms/ArizonaFamilyLawProcedureForms

Members should discuss whether to include a link in these rules, or alternatively to simply refer to the Supreme Court website without providing a link.

Commented [MPJ1]: I don't think that we should use links in rules as the links change.

Rule 97. Family Law Forms

(a) Generally. The forms listed in this rule are recommended and meet the requirements of these rules.

(b) Substantial Compliance. When these rules refer to a recommended form, a party may delete content of a recommended form if the form requests particular information that does not apply to the party's case. A party who deletes content in a recommended form, or who fails to complete a portion of a recommended form, represents to the court and to other parties that the question or item does not apply.

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